



# भारत का राजपत्र The Gazette of India

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सं. 24]

नई दिल्ली, अगस्त 27—सितम्बर 2, 2017, शनिवार/भाद्र 5 — भाद्र 11, 1939

No. 24]

NEW DELHI, AUGUST 27—SEPTEMBER 2, 2017, SATURDAY/BHADRA 5—BHADRA 11, 1939

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)

PART II—Section 3—Sub-section (iii)

केन्द्रीय अधिकारियों (संघ राज्य क्षेत्र प्रशासनों को छोड़कर) द्वारा जारी किए गए साधारण आदेश और अधिसूचनाएं  
Orders and Notifications issued by the Central Authorities (Other than the Administrations of Union Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 8 अगस्त, 2017

आ. अ. 49.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106(ख) के अनुसरण में, निर्वाचन आयोग एतद्वारा निर्वाचन अर्जी सं. 4/2014 में दिए गये उच्च न्यायालय, पटना के तारीख 21 जून, 2017 के आदेश को प्रकाशित करता है।

(आदेश अधिसूचना के अंग्रेजी भाग में छपा है)

[सं. 82/ES-1/EP/(4/2014)/BR-HP/2017]

आदेश से,

सुमित मुखर्जी, प्रधान सचिव

ELECTION COMMISSION OF INDIA

New Delhi, the 8th August, 2017

O.N. 49.— In pursuance of Section 106(b) of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes Order dated the 21<sup>st</sup> June, 2017 of the High Court of Judicature at Patna in Election Petition No. 4 of 2014.

## IN THE HIGH COURT OF JUDICATURE AT PATNA

## Election Petition No. 4 of 2014

Ram Niranjana Roy son of Shri Rameshwar Roy, resident of N6, Officers' Flat, New Punaichak, Patna- 23 and President of Rashtravadi Loktantrik Party  
...Petitioner/s

*Versus*

1. The State of Bihar through Chief Secretary (Deleted)
2. Dr. Pratima, Returning Officer, 05- Sitamarhi Parliamentary Constituency-cum-District Magistrate, Sitamarhi (Bihar)
3. Chief Electoral Office, 7 Mangals Road, Patna (Deleted)
4. Chief Election Commissioner, Nirvachan Sadan, Ashoka Road, New Delhi (Deleted)
5. Principal Secretary, Home (Police) Department, Government of Bihar, Patna (Deleted)
6. Ram Kumar Sharma son of Mahesh Prasad Sharma, Village-Nanpur, Tola Begaha, P.O.- Sirsi, P.S.- Nanpur, District- Sitamarhi, the returned candidate  
... Respondent/s

**Appearance :** For the Petitioner/s : Mr. Ram Niranjana Roy (in person) For the Respondent No. 2 : Mr. Sidharth Prasad

**CORAM:** HONOURABLE MR. JUSTICE RAKESH KUMAR CAV JUDGMENT

Date: 21 -06-2017 1.

The present application was filed under Section 80, 80A and 81 of the Representation of People Act, 1951 (hereafter referred to as the "R.P. Act") read with Article 329(b) of the Constitution of India for the following reliefs:-

- (i) To hold and declare that the rejection of nomination papers nos. 38 and 39 of the petitioner by Returning Officer-cum-District Magistrate, Patna High Court E.P. No. 4 of 2014 dt. 21-06-2017 2/21 Sitamarhi/ Respondent No. 2 in the said election is bad in law and fit to be set aside.
- (ii) (ii) To hold and declare the election of the returned candidate/ Respondent No. 6 from 05 -Sitamarhi Parliamentary Constituency void.
- (iii) To hold and declare that pursuant to the election for 05- Sitamarhi Parliamentary constituency being void, the Election Commission of India shall hold fresh election for it.

2. Short fact of the case is that the petitioner was a candidate for election of Lok Sabha, which was scheduled to be held in the year 2014 for 05 -Sitamarhi Parliamentary Constituency. The election process was initiated on 12.04.2014 and election was held on 07.05.2014. Thereafter, result was declared on 16.05.2014. The petitioner had filed nomination paper on 19.04.2014 as a candidate of Rashtravadi Loktantrik Party for the said election. The petitioner was an Officer of Bihar Police Service and also President of Bihar Police Seva Sangh. He was lastly posted as Deputy Superintendent of Police, Criminal Investigation Department, Bihar, Patna. It has been stated in the petition that he was fighting for his promotion to the rank of Superintendent of Police and to the Cadre of Indian Police Service on the plea that Officers of his batch were already promoted to the rank of Superintendent of Police as well as to the Cadre of Indian Police Service. The election petitioner vide his letter dated 31.12.2013 Patna High Court E.P. No.4 of 2014 dt.21-06-2017 3/21 addressed to the Principal Secretary, Home (Police) Department, Government of Bihar intimated for voluntary retirement with effect from 31.03.2014 after granting him promotion to the rank of Superintendent of Police from 03.02.2009. The said application for voluntary retirement was given three months before, but since he received no response from the Department in respect of his intimation of voluntary retirement, he sent another letter on 25.02.2014 to the Principal Secretary, Home (Police) Department, Government of Bihar stating therein that he was resigning from his post after 31.03.2014, if application for voluntary retirement was not accepted by the Government. Thereafter, the petitioner was informed vide letter no. 2165 dated 12.03.2014 issued by the Deputy Secretary, Home (Police) Department, Bihar that his application for voluntary retirement was conditional and the post of Superintendent of Police belongs to the Cadre of Indian Police

Service. The petitioner thereafter replied and reiterated that he may be allowed voluntary retirement with effect from 31.03.2014 after giving him promotion to the post of Superintendent of Police, or otherwise, he would resign from his post after 31.03.2014. Thereafter, the petitioner tendered his resignation from his post on 01.04.2014 and he joined a Political Party named as Rashtravadi Loktantrik Party on 02.04.2014. He decided to contest the Parliamentary Election of 2014 from 05- Patna High Court E.P. No.4 of 2014 dt.21-06-2017 4/21 Sitamarhi Parliamentary Constituency and he filed nomination papers on 19.04.2014 as a candidate of Rashtravadi Loktantrik Party before the Returning Officer- cum -District Magistrate , Sitamarhi. Along with his nomination papers he attached photo copy of resignation - letter. Thereafter, the Returning Officer issued a check- list on 19.04.2014 itself. It has been pleaded in the petition that as per the check- list all required documents were filed with the nomination papers and no document was to be filed further. However, on 21.04.2014 which was the date of scrutiny of the nomination papers, the Returning Officer- cum- District Magistrate, Sitamarhi rejected nomination papers nos. 38 and 39 of the petitioner mentioning therein that petitioner was holding an office of profit on 21.04.2014 under the State Government and he had not submitted papers regarding acceptance of his resignation- letter by the Government. After rejection of nomination papers of the petitioner the election process proceeded and held on scheduled date and in the said election one Sri Ram Kumar Sharma was declared as the returned candidate. Initially, the petitioner, after rejection of his nomination papers, had filed a writ petition vide CWJC No. 8451 of 2014, which stood dismissed on 09.05.2014 primarily on the ground that in view of the provisions contained in Article 329(b) of the Constitution of India in election dispute writ petition was not maintainable. Thereafter, the Patna High Court E.P. No.4 of 2014 dt.21-06-2017 5/21 petitioner filed the present election petition on 30.6.2014. Initially, the petitioner had arrayed six persons as respondents in the following seriatim:-

- (1) The State of Bihar Though Chief Secretary.
- (2) Dr. Pratima, Returning Officer, 05-Sitamarhi Parliamentary Constituency – cum- District Magistrate , Sitamarhi (Bihar).
- (3) Chief Electoral Officer, 7 Mangals Road, Patna
- (4) Chief Election Commissioner, Nirvachan Sadan, Ashoka Road, New Delhi
- (5) Principal Secretary, Home (Police) Department Government of Bihar, Patna
- (6) Ram Kumar Sharma, son of Mahesh Prasad Sharma, village – Nanpur, Tola – Begaha, P.O. – Sirsi, P.S. – Nanpur, District – Sitamarhi , the returned candidate”

3. Since number of unnecessary persons were added as respondents, the stamp reporter had pointed out defects. Finally, the petitioner with the permission of the court deleted the names of respondent Nos. 1, 3, 4 and 5 from the record. The petitioner after filing an affidavit was permitted to appear in person. Finally , by order dated 19.02.2015 after valid service of notice on two surviving respondents, after appearance of respondent No. 2 vide order dated 19.02.2015 the court decided to proceed ex-parte against the returned candidate i.e. Sri Ram Kumar Sharma, who despite valid service of notice had not appeared and after hearing the parties by the said order i.e. the order dated 19.02.2015 following issues were framed:- “1. Whether the election petition Patna High Court E.P. No.4 of 2014 dt.21-06-2017 6/21 (correctly petitioner) can be held holding an office of profit on 21.04.2014 under the State Government on the date of filing of his nomination papers i.e. 19.04.2014 for which scrutiny was held on 21.04.2014 justifying rejection of his nomination papers? 2. Whether the nomination paper filed by the election petitioner was improperly rejected by the Returning Officer of 05 Sitamarhi Parliamentary Constituency? 3. Whether the demand of the paper with regard to acceptance of resignation letter of the petitioner by the State Government made by the Returning Officer-cum District Magistrate was sudden and uncalled for? 4. Whether the letter dated 31.12.2013 was a valid offer of voluntary retirement from the service of the State and the respondent State was bound to accept the same?” 4. Since in the election petition certain facts were made in paragraph nos. 16 to 20 of the election

petition against the Returning Officer, on the prayer of petitioner, he was allowed not to delete the name of respondent No. 2/ Returning Officer-cum -District Magistrate from the record and as such, in the present case the Returning Officer -cum-District Magistrate, Sitamarhi appeared and filed a written statement justifying the rejection of nomination papers of the election petitioner. In the case besides filing list of documents, on behalf of the election petitioner list of witnesses was also filed. The list of witnesses filed by the election petitioner contains the Patna High Court E.P. No. 4 of 2014 dt.21-06-2017 7/21 following names:- (a) List of official witnesses:- (i) Dr. Pratima, Returning Officer, 05 -Sitamarhi Parliamentary Constituency -cum-District Magistrate, Sitamarhi, (Bihar)/ respondent No. 2 (ii) Mr. Amir Subhani, Principal Secretary , Home (Police) Department, Government of Bihar, Patna (b) List of non -official witnesses:- (i) Sri Ravindra Jha, son of Jiwachha Jha, villageParoha, P.O.- Parasauni, P.S. -Dumra , District -Sitamarhi (ii) Sri Sanjit Raut, son of Sri Jaikun Raut, Village -Hanuman Nagar, P.O. - Lalpur, P.S. - Nanpur, district - Sitamarhi (iii) Sri Neeraj Kumar Son of Sri Rajakumar Jha, village- Paroha, P.O. - Parasauni, P.S. -Dumra, District - Sitamarhi.

5. During trial of the present election petition from the list of witnesses submitted on behalf of the election petitioner only one official witness namely Mr. Amir Subhani, Principal Secretary, Home (Police) Department, Government of Bihar, Patna was examined and cross- examined, however, none of other witnesses mentioned in the list of witnesses submitted on behalf of the petitioner was examined nor the election petitioner bothered to take Patna High Court E.P. No.4 of 2014 dt.21-06-2017 8/21 effective steps for getting them examined as witnesses. Besides one official witness the election petitioner himself got examined as P.W. 2. So far other cited witnesses are concerned, deposition on affidavit of one Sri Ravindra Jha was brought on record, however during trial he was not produced either to identify his signature on his deposition on affidavit, which has been brought on record nor he was tendered for his cross-examination.

6. Since all the four issues, which were framed in the present case are inter-related, all the issues are required to be dealt with conjointly. The election petitioner who has appeared in person has argued that once he had tendered application for his voluntary retirement on 31.12.2013, after expiry of three months even in case of non-acceptance of his application for voluntary retirement, it was deemed to be accepted, and as such, there was no further requirement to produce any document regarding acceptance of his application for voluntary retirement and on 31.03.2014 he had ceased to be a Government Servant. Accordingly, he was not to be treated as disqualified under Article 102(1)(a) of the Constitution of India from contesting the election. To substantiate his submission that after expiry of three months from the date of submission of his application for voluntary retirement he had ceased to be Government Servant, he has placed reliance on a judgment of the Hon'ble Apex Court Patna High Court E.P. No. 4 of 2014 dt.21-06-2017 9/21 reported in AIR 1978 SC 17 DINESH CHANDRA SANGMA Versus STATE OF ASSAM AND OTHERS. He has argued that after submission of nomination papers i.e. on 19.04.2014, had there been any defect in the nomination papers, those defects were required to be indicated in the check- list which was issued by the Returning Officer after submission of nomination papers, nor petitioner was asked to produce any letter either with respect to acceptance of his application for voluntary retirement or acceptance of his resignationletter. He submits that even after receiving no response regarding acceptance of his voluntary retirement, the petitioner on 1st April , 2014 had tendered resignation- letter, however, the election petitioner was never asked by the Returning Officer to satisfy her regarding the judgments that he was not a Government Servant on the date of filing of nomination papers. According to the election petitioner after issuance of check- list on 19.04.2014 suddenly on the date of scrutiny of nomination papers i.e. on 21.04.2014 the Returning Officer asked him to produce letter of acceptance of his resignation- letter. Though the petitioner requested for granting some time to apprise her with the legal position, his nomination papers in form nos. 38 and 39 was rejected vide Annexure VII and VIIA to the election petition, which has been brought on record along with verification of the election petitioner. He has argued that in view of Section 36 (5) of the R.P. Act Patna High Court E.P. No. 4 of 2014 dt. 21-06-2017 10/21 it was duty on the part of the Returning Officer to grant some time to enable the election petitioner to satisfy the Returning Officer with the rulings of the Supreme Court, however, contrary to the statutory provisions, his nomination papers were rejected. He has placed reliance on (2012 ) 1 SCC 762

RAMESH ROUT Versus RABINDRA NATH ROUT on the point that had there been any missing documents in the nomination papers, in the check- list those facts were required to be incorporated, however on 19.04.2014 after submission of nomination papers the check- list was issued in which no infirmity was shown. He has also placed reliance on AIR 2001 SC 2583 Shibu Soren v. Dayanand Sahay on the point that merely on the ground that his resignation was not accepted it will not be deemed that he was holding an office of profit on the date of either submission of nomination papers or scrutiny of nomination papers. Besides the aforesaid judgments the petitioner has also referred other judgments which were noticed by this Court however, considering the fact that those decisions were not having any bearing for adjudication of the present case, this Court is refrained from incorporating all such case laws. 7. In the present case the respondent No. 2/ the Returning Officer-cum-Collector , Sitamarhi has filed a written statement wherein it has been indicated that election petitioner had Patna High Court E.P. No. 4 of 2014 dt.21-06-2017 11/21 filed nomination papers as a candidate for election to the House Of People i.e. Lok Sabha for 05- Sitamarhi Parliamentary Constituency on 19.4.2014 in last General Election of 2014 but since the election petitioner had been an officer of Bihar Police Service he was required to submit such documents on the date of filing of nomination papers, which might prove that election petitioner was not continuing on the post of any profit on the date of nomination as a candidate of the General Election to the Lok Sabha, 2014. However, during scrutiny of the nomination papers filed by the candidates for Lok Sabha Election of 2014 it was found that election petitioner had not submitted any document relating to acceptance of his resignation from the Government Service as a proof of discontinuation from the post of profit which the petitioner was holding, so the Returning Officer found that the petitioner cannot be accepted as a candidate for election to the House Of People for 05 - Sitamarhi Parliamentary Constituency as per the provisions laid down under Article 102 (1) (a ) of the Constitution of India and hence nomination of the petitioner was rejected by the Returning Officer. 8. During trial of the case in the deposition of P.W. 1, who is official witness and was examined as per list of witnesses submitted by the election petitioner, it is evident that on the date of submission of nomination papers or on the date of scrutiny of Patna High Court E.P. No. 4 of 2014 dt. 21-06-2017 12/21 nomination papers the petitioner had not ceased to be a Government Servant. In the Examination-in-Chief of P.W. 1 Mr. Amir Subhani, Principal Secretary, Department of Home, he has stated that the election petitioner had requested for his voluntary retirement with effect from 31.03.2014 with granting promotion to the post of Superintendent Of Police. He has further stated that petitioner had also made a communication stating therein that if no decision is taken regarding voluntary retirement by 31.03.2014 then he may resign. Thereafter, he has further stated that the Deputy Secretary, Home ( Police ) Department had written a letter to the petitioner stating that his representation for voluntary retirement was conditional because he had asked for voluntary retirement with promotion to the post of Superintendent Of Police. Accordingly , he was intimated to do the needful. In his cross-examination P.W. 1 has answered that petitioner had sent a letter on 1st April, 2014 indicating about his resignation with effect from the same date whereupon letters were sent to the Vigilance Department and Building Department for vigilance clearance and no dues, which was necessary before acceptance of resignation. He has also answered to the question asked by the election petitioner in his cross-examination that notification to the extent of his voluntary retirement was issued on 16.02.2015. P.W. 1 was also cross-examined on behalf of the Patna High Court E.P. No. 4 of 2014 dt. 21-06-2017 13/21 respondent No. 2 / Returning Officer-cum-Collector and in his further cross-examination P.W. 1 has stated that petitioner submitted an application for V.R.S. on 31st December 2013 and again resignation letter was sent on 1st April, 2014. A letter was sent on 9th May , 2014 and reminder on 11th July, 2014 to the Police Headquarter asking for no dues certificate. Another letter was sent on 9th May , 2014 to the Vigilance Department asking for vigilance clearance. Letters were sent on 12th August, 2014 and reminder on 24th September, 2014 to the Police Headquarter demanding the required information. The petitioner was asked through letter dated 3rd November, 2014 to give a declaration about no dues. Reminders were again sent on 3rd November, 2014 to the Vigilance Department. A letter was sent on 18th December, 2014 to the Executive Engineer of the Department asking for no dues and a letter was sent on the same date to the Financial Personnel Claim Cell

asking for no dues. P.W. 1 has reiterated in his cross-examination that the election petitioner was holding post of profit on 19.04.2014 i.e. the date of submission of nomination paper and on 21.04.2014 i.e. the date of rejection of nomination papers and at that point of time the election petitioner was on the post of Deputy Superintendent Of Police. In the deposition on affidavit of election petitioner who was examined as P.W. 2 the election petitioner has reiterated that he had Patna High Court E.P. No. 4 of 2014 dt. 21-06-2017 14/21 resigned from his post on 01.04.2014 after his representation for voluntary retirement with effect from 31.03.2014 was not accepted by the State Government. In paragraph No. 8 of his deposition on affidavit he has stated that on the date of scrutiny i.e. on 21.04.2014 the Returning Officer suddenly demanded the papers regarding acceptance of his resignation- letter by the State Government however, in his cross-examination the P.W. 2 i.e. the election petitioner namely, Sri Ram Niranjana Roy in specific term has admitted that on the date he presented his nomination papers his resignation was not accepted and his voluntary retirement from service was accepted now. It was accepted with effect from February, 2015. Of-course deposition on affidavit of Sri Ravindra Jha who was cited as a witness in the list of witnesses submitted by the petitioner was brought on record he was not tendered even either to accept his signature on affidavit or for cross –examination. For just decision in the matter this Court has also perused his affidavit. In the said affidavit he has reiterated that on the date of scrutiny i.e. on 21.04.2014 the Returning Officer suddenly demanded paper regarding acceptance of resignation-letter otherwise, he has reiterated about the fact that the election petitioner had tendered resignation on 01.04.2014. 9. Sri Sidharth Prasad, learned counsel who has Patna High Court E.P. No. 4 of 2014 dt. 21-06-2017 15/21 appeared on behalf of the respondent No. 2 i.e. Returning Officer -cum-Collector, Sitamarhi has argued that in view of the evidences brought on record it is evident that on the date of either filing of nomination papers or on the date of scrutiny the petitioner was not in a position to satisfy that either his application for voluntary retirement or his resignation from Government service was accepted by the competent authority. Even in his cross-examination election petitioner has categorically accepted that on the date of either nomination or scrutiny his resignation was not accepted nor his voluntary retirement was accepted and finally, his resignation was accepted with effect from February , 2015 whereas, nomination papers were filed on 19.04.2014 and scrutiny was held on 21.04.2014. He submits that in any event on the date of filing of nomination or on the date of scrutiny he had not ceased to be a Government Servant and since he was holding a post of profit in the Government of Bihar in view of Article 102 (1) (a) of the Constitution of India he was not eligible to contest the election in question and as such, the Returning Officer had rightly rejected his nomination paper on the date of scrutiny. It has already been noticed that in the said election Sri Ram Kumar Sharma was elected as the returned candidate however, he has chosen not to appear in the present proceeding and as such, the case has proceeded ex parte against him. Patna High Court E.P. No. 4 of 2014 dt. 21-06-2017 16/21 10. So far as Ramesh Rout Case (Supra ) is concerned the petitioner may not get any benefit from the said judgment. In the said case there was some defect in signing Form A and B in ink, which was curable after being informed by the Returning Officer at the time of scrutiny of the nomination paper whereas, in the present case it is admitted that on the date of nomination the petitioner had not ceased to be a Government Servant in absence of acceptance of his application for voluntary retirement or resignation-letter. So far application for voluntary retirement of the petitioner is concerned which was submitted on 31st December, 2013 it is evident that application for voluntary retirement of the petitioner was conditional. He was making prayer for allowing him to take voluntary retirement after promoting him as Superintendent Of Police from the post of Deputy Superintendent of Police. In normal course only those applications for voluntary retirement can be entertained wherein there is no condition. In a case of conditional voluntary retirement application, principle of deemed acceptance of such voluntary retirement after expiry of three months may not be applicable since acceptance of voluntary retirement is dependent on fulfillment of the conditions imposed in the application for voluntary retirement. In view of this proposition and peculiar facts of the present case even petitioner may not get any benefit. So far Dinesh Patna High Court E.P. No. 4 of 2014 dt. 21-06-2017 17/21 Chandra Sangma Case (Supra) is concerned, the said case has got no relevance for adjudication of the present case. In the said case notice for voluntary retirement was without any condition

whereas, in the present case the petitioner had tendered application for V.R.S. with condition that he should be promoted as Superintendent Of Police. Similarly, the petitioner may not get any benefit from Sayed Muzaffar Mir Case i.e. 1994 AIR SCW 4228 Union of India and others v. Sayed Muzaffar Mir. In the present case the petitioner had submitted application for voluntary retirement on condition of granting him promotion as Superintendent Of Police which was also replied by the Department that since it was conditional it may not be accepted. So far Shibu Soren Case (Supra ) is concerned again it has got no relevance for adjudication of the present case. In the present case the petitioner was obviously holding a post of profit in the Government of Bihar and as such, he was disqualified to be a candidate in view of the provisions contained in Article 102(1)(a) of the Constitution of India. So far Ashok Kumar Bhattacharyya case i.e. AIR 1985 SUPREME COURT 211 Ashok Kumar Bhattacharyya v. Ajoy Biswas and others is concerned, in the said case the candidate was an Accountant-in-charge in Agartala Municipality which was considered by the Hon'ble Apex Court to be not a Government whereas, in the present case the petitioner was Patna High Court E.P. No. 4 of 2014 dt. 21-06-2017 18/21 continuing as Dy. S.P. in the Government of Bihar. The election petitioner had also raised a plea that in view of Section 36 (5) of the R.P. Act it was necessary to allow time to the election petitioner to rectify the defects in the nomination papers on the date of its scrutiny. So far provision contained in Section 36 (5) of the R.P. Act is concerned it is very clear that the Returning Officer while conducting scrutiny on the appointed date shall not allow any adjournment of the proceedings however, proviso suggests that if objection is raised by the Returning Officer the concerned candidate may be allowed time to rebut it not later than the next date but one following the date fixed for scrutiny. Even for the time being if it is assumed that any error was committed by the Returning Officer in not granting further time, in any event this error was not sufficient for interference with the election process. In the present case even till the date of hearing of this election petition the election petitioner was not in a position to satisfy that on the date of filing nomination papers or on the date of scrutiny of the nomination papers he was not a Government Servant rather in his cross -examination the election petitioner, who was examined as P.W. 2, himself has accepted that his voluntary retirement was accepted with effect from the month of February , 2015 whereas in the case nomination paper was filed on 19.04.2014 and scrutiny was conducted on 21.04.2014 on which date his Patna High Court E.P. No. 4 of 2014 dt. 21-06-2017 19/21 nomination in form Nos. 38 and 39 was rejected. In form No. 38 and 39 which have been brought on record as Annexure VII and VIIA to the present petition in categorical terms it has been stated as follows: संवीक्षा के क्रम में पाया गया की अभ्यर्थी द्वारा राज्य सरकार के अधीन दि. 21.4.14 को लाभ का पद धारण करते हैं। संवीक्षा की तिथि तक धारित पद से दिये गये त्याग पत्र को सरकार द्वारा मंजूरी संबंधी कागजात समर्पित नहीं कर सके। संविधान के उद्घरण Sec 102(1) (क) भारत सरकार या राज्य सरकार के अधीन लाभ का पद धारण करने वाले व्यक्ति किसी सदन का सदस्य चुने जाने के लिए निरहित होगा। अतः राम निरंजन राय द्वारा दाखिल नाम निर्देशन पत्र संख्या (38) को अस्वीकृत किया जाता है।

“संवीक्षा के क्रम में पाया गया की अभ्यर्थी द्वारा राज्य सरकार दि. 21.4.14 को लाभ का पद धारण करते हैं। संवीक्षा की तिथि तक धारित पद से त्याग पत्र को राज्य द्वारा मंजूरी संबंधी कागजात समर्पित नहीं कर सके। संविधान के उद्घरण Sec 102(1) (क) के अनुसार भारत सरकार या राज्य सरकार के अधीन लाभ का पद धारण करने वाले व्यक्ति किसी सदन का सदस्य चुने जाने के लिए निरहित होगा। अतः राम निरंजन राय द्वारा दाखिल नाम निर्देशन पत्र संख्या (39) को अस्वीकृत किया जाता है।

11. On perusal of the evidences as well as pleadings all the aforesaid issues which were framed are decided against the petitioner.

12. On the basis of evidences on record it is established that either on the date of filing nomination papers or on the date of scrutiny the petitioner had not brought any letter issued on behalf of the Government to show either acceptance of his voluntary retirement or acceptance of his resignation letter and as such, on the said date the petitioner was holding an office of profit under the Patna High Court E.P. No.4 of 2014 dt.21-06-2017 20/21 Government of Bihar. Nor in the present proceeding any document has been brought on record to show that any notification or order was issued by the Parliament not to disqualify such office. It would be appropriate to incorporate provisions contained in Article 102 of the Constitution of India which is as follows:-

“102. Disqualifications for membership.—(1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament –

(a) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;

(b) if he is of unsound mind and stands so declared by a competent court;

(c) if he is an undischarged insolvent;

(d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State;

(e) if he is so disqualified by or under any law made by Parliament.

(2) A person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule.”

13. In view of the fact that the election petitioner was occupying an office of profit under the Government of Bihar on the date of nomination as well as scrutiny, his nomination papers was rightly rejected by the Returning Officer-cum-Collector, 05- Patna High Court E.P. No. 4 of 2014 dt. 21-06-2017 21/21 Sitamarhi Parliamentary Constituency. Accordingly, the election petition stands dismissed.

Praful/- (Rakesh Kumar, J) AFR/NAFR NAFR

CAV DATE 02-05-2017

Uploading Date 22 -06-2017 Transmission Date NA

[No. 82/ES-1/EP/(4/2014)/BR-HP/2017]

By Order,

SUMIT MUKHERJEE, Principal Secy.

आदेश

नई दिल्ली, 8 अगस्त, 2017

आ.अ. 50.—यतः निर्वाचन आयोग का समाधान हो गया है कि नीचे की सारणी के स्तम्भ 2) में यथा—विनिर्दिष्ट बिहार विधान सभा के साधारण निर्वाचन, 2015 के लिए जो स्तम्भ 3) में विनिर्दिष्ट निर्वाचन क्षेत्र से हुआ है स्तम्भ 4) में उसके सामने विनिर्दिष्ट निर्वाचन लड़ने वाला प्रत्येक अभ्यर्थी, लोक प्रतिनिधित्व अधिनियम, 1951 तथा तदधीन बनाए गए नियमों द्वारा अपेक्षित उक्त सारणी के स्तम्भ 5 में यथादर्शित अपने निर्वाचन व्ययों का कोई भी लेखा दाखिल करने अथवा रीति के अनुसार लेखा दाखिल करने में असफल रहा है;

और, यतः उक्त अभ्यर्थियों ने, सम्यक् सूचना दिए जाने पर भी उक्त असफलता के लिए कोई कारण अथवा स्पष्टीकरण नहीं दिया है या उनके द्वारा दिये गये अभ्यावेदनों पर, यदि कोई हो, विचार करने के पश्चात् निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिए कोई पर्याप्त कारण या न्यायौचित्य नहीं है

अतः अब, निर्वाचन आयोग उक्त अधिनियम की धारा 10—क के अनुसरण में नीचे की सारणी के स्तम्भ 4) में विनिर्दिष्ट व्यक्तियों को संसद के किसी भी सदन के या किसी राज्य/संघ राज्य की विधान सभा अथवा विधान परिषद् के सदस्य चुने जाने और सदस्य होने के लिए इस आदेश की तारीख से तीन वर्ष की कालावधि के लिए निरर्हित घोषित करता है :-

सारणी

क्रम सं.	निर्वाचन का विवरण	निर्वाचन क्षेत्र की संख्या व नाम	अभ्यर्थी का नाम व पता	निर्हरता का कारण
1	2	3	4	5
1	बिहार विधान सभा का साधारण निर्वाचन 2015	23—रीगा	गोनौर दास, ग्राम+ पोस्ट— बड़हरवा, थाना— मेजरगंज, जिला—सीतामढ़ी, बिहार।	निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहे।
2	—वही—	—वही—	मो. अब्बास शेख, ग्राम+ पोस्ट— पोशुआ पटनिया,	—वही—



क्रम सं.	निर्वाचन का विवरण	निर्वाचन क्षेत्र की संख्या व नाम	अभ्यर्थी का नाम व पता	निर्हरता का कारण
1	2	3	4	5
	बिहार विधान सभा का साधारण निर्वाचन 2015		थाना— रीगा, जिला— सीतामढ़ी, बिहार।	निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहे।
3	—वही—	26—सुरसण्ड	मुकेश कुमार सिंह ग्राम+ पो.— भवदेपुर, थाना— रीगा, जिला— सीतामढ़ी, बिहार।	—वही—
4	—वही—	27—बाजपट्टी	अवधेश कुमार ग्राम—बसहा, पो.—मधुबन बसहा, थाना—बाजपट्टी, जिला—सीतामढ़ी, बिहार।	—वही—
5	—वही—	—वही—	आशनारायण झा ग्राम+ पो.— कोयली, थाना— नानपुर, जिला— सीतामढ़ी, बिहार।	—वही—
6	—वही—	—वही—	रेखा देवी ग्राम+ पो.— रसलपुर, थाना— बाजपट्टी, जिला— सीतामढ़ी, बिहार।	—वही—
7	—वही—	—वही—	रेखा देवी ग्राम+ पो.— रसलपुर, थाना— बाजपट्टी, जिला— सीतामढ़ी, बिहार।	—वही—
8	—वही—	28—सीतामढ़ी	इरशाद अहमद पिता— मो. शफी जानकी स्थान, राईन कॉलनी, वार्ड नं. 6, सीतामढ़ी, पो.+ , थाना+जिला—सीतामढ़ी, बिहार।	—वही—
9	—वही—	120—अमनौर	धन्ना देवी ग्राम—अमनौर हरनारायण, पो.— अमनौर, थाना— अमनौर, प्रखण्ड— अमनौर, अनुमण्डल— मढ़ौरा, जिला— सारण, बिहार।	—वही—
10	—वही—	—वही—	प्रिय रंजन सिंह ग्राम—वलहाँ, पो.— अमनौर, थाना— अमनौर, प्रखण्ड— अमनौर, अनुमण्डल— मढ़ौरा, जिला— सारण, पिन कोड—841401 बिहार।	—वही—
11	—वही—	121—परसा	अजीत कुमार पिता—स्व. विजय प्रसाद, ग्राम— भगवानपुर, पो.— फतेहपुर चैन, थाना— अवतारनगर, जिला— सारण, बिहार।	—वही—
12	—वही—	—वही—	चन्दन कुमार सिंह पिता— बीगनेश्वर सिंह, ग्राम— सखनौली, पो.— खानपुर, थाना— अवतारनगर, जिला— सारण, बिहार।	—वही—
13	—वही—	122—सोनपुर	अमोद कुमार सिंह पिता— प्रहलाद सिंह, ग्राम+ पो.— भरपुरा,	—वही—

क्रम सं.	निर्वाचन का विवरण	निर्वाचन क्षेत्र की संख्या व नाम	अभ्यर्थी का नाम व पता	निर्हरता का कारण
1	2	3	4	5
			थाना— सोनपुर, जिला— सारण, बिहार।	
14	बिहार विधान सभा का साधारण निर्वाचन 2015	142—बछवाड़ा	नरेश पासवान, ग्राम— आजाद नगर, पोस्ट— बछवाड़ा, वार्ड सं.—8, जिला— बेगूसराय, बिहार।	निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहे।
15	—वही—	153—गोपालपुर	मो. एहसान ग्राम— उजानी, पो.— मनियामोर, थाना— नवगछिया, जिला— भागलपुर, बिहार।	—वही—
16	—वही—	—वही—	सुनील कुमार ग्राम— प्रतापनगर, पो.— ढोलबज्जा, थाना— ढोलबज्जा ओ.पी. जिला— भागलपुर, बिहार।	—वही—
17	—वही—	154—पीरपैती (अ.जा.)	हीरालाल पासवान ग्राम—मलिकपुर, पोस्ट— पीरपैती बाजार, थाना— पीरपैती, जिला— भागलपुर बिहार।	—वही—
18	—वही—	—वही—	शिवनारायण पासवान उर्फ शिवलाल पासवान ग्राम— बरैनी, पोस्ट— बरैनी, थाना— कहलगाँव, जिला— भागलपुर, बिहार।	—वही—
19	—वही—	155—कहलगाँव	विनोद पांडेय मो.—बाखरपुर, पीरपैती, जिला— भागलपुर, बिहार।	—वही—
20	—वही—	181—दीघा	प्रमोद कुमार सिंह ग्राम— हसनपुरा, पो.+थाना— बेउर, जिला—पटना—बिहार, पिन कोड— 800002	—वही—
21	—वही—	191—बिक्रम	सुरेन्द्र यादव ग्राम— निजामपुर टोला, पो.— दनाड़ा, बिक्रम, पटना, बिहार।	—वही—
22	—वही—	—वही—	संतोष कुमार ग्राम— मुलाहिमपुर, पो.— अमहारा, बिहटा, पटना, बिहार।	—वही—
23	—वही—	206—चैनपुर	परमेश्वर सिंह ग्राम— बनधा, पो.+थाना— अधौरा, जिला— कैमूर (भभुआ), बिहार।	—वही—
24	—वही—	209—करगहर	पंकज कुमार सिंह ग्राम— दरियापुर, पो.— भैसवां, थाना— मसौढ़ी, जिला— पटना, बिहार।	—वही—

[सं. 76/आदेश/पूर्व-अनु.-1/बिहार-वि.स./2015]

आदेश से,

सुमित मुखर्जी, प्रधान सचिव

**ORDER**

New Delhi, the 8th August, 2017

**O.N. 50.**—Whereas, the Election Commission is satisfied that each of the contesting candidates specified in column (4) of the Table below at the General Election to the Legislative Assembly, 2015 from the State of Bihar as specified in column (2) held from the constituency specified in column (3) against his/her name, has failed to lodge any account of his/her election expenses at all or in the manner as required by the Representation of the People Act, 1951, and the rules made thereunder as shown in column(5) of the said Table;

And Whereas, the said candidates have either not furnished any reason or explanation for the said failure even after due notice of the Election Commission, or after considering the representation, if any made by them, the Election Commission is satisfied that they have no good reason or justification for the said failure;

Now, therefore, in pursuance of Section 10A of the said Act, the Election Commission hereby declares the persons specified in column(4) of the Table below to be disqualified for being chosen as, and for being a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of a State/Union Territory for a period of three years from the date of this order:-

**TABLE**

S. No.	Particulars of Election	Number & Name of the Constituency	Name &Address of the Candidate	Reason of disqualification
1	2	3	4	5
1	General Election to the Bihar Legislative Assembly 2015	23- Riga	Gonaur Das Vill+Post- Barharwa, Thana- Mejarganj, District- Sitamarhi, Bihar.	Failure to lodge any account of Election expenses
2	-do-	-do-	Md. Abbas Sekh Vill+Post- Posua Patniya, Thana- Riga, District- Sitamarhi, Bihar.	-do-
3	-do-	26-Sursand	Mukesh Kumar Singh Vill+Po- Bhavdepur, PS- Riga, District- Sitamarhi, Bihar.	-do-
4	-do-	27-Bajpatti	Awadhesh Kumar Vill.-Basaha, P.S- Bajpatti, Distt.- Sitamarhi. Bihar.	-do-
5	-do-	-do-	Ash Narayan Jha Vill.+P.O.- Koily, P.S- Nanpur, Distt.- Sitamarhi, Bihar.	-do-
6	-do-	-do-	Rekha Devi Vill.- Rasalpur, P.S.- Bajpatti, Distt.-Sitamarhi, Bihar.	-do-
7	-do-	-do-	Rekha Devi Vill.+P.O.- Rasalpur, P.S- Bajpatti, Distt.- Sitamarhi, Bihar.	-do-
8	-do-	28-Sitamarhi	Irshad Ahmad S/O- Md. Shafi Jankisthan, Raïen colony, Ward No. 06, Sitamarhi, P.O.+P.S.+District- Sitamarhi, Bihar.	-do-
9	-do-	120-Amnour	Dhanna Devi Vill-Amnour Harnarayan, P.O-	-do-

S. No.	Particulars of Election	Number & Name of the Constituency	Name & Address of the Candidate	Reason of disqualification
1	2	3	4	5
	General Election to the Bihar Legislative Assembly 2015		Amnour, P.S- Amnour, Block- Amnour, Sub Divi.- Marhaurah, District.- Saran, Bihar.	Failure to lodge any account of Election expenses
10	-do-	-do-	Priy Ranjan Singh Vill-Balhan, P.O-Amnour, P.S- Amnour, Block- Amnour, Sub Divi.- Marhowrah, District.- Saran, Pin Code- 841401 Bihar.	-do-
11	-do-	121-Parsa	Ajeet Kumar S/o Late Vijay Prasad Vill- Bhagwanpur, PO- Fatehpur Chain, PS- Awatarnagar, Distt- Saran, Bihar.	-do-
12	-do-	-do-	Chandan Kumar Singh S/o Bigneshwar Singh Vill- Sakhnauli, PO- Khanpur, PS- Awatarnagar, Distt- Saran, Bihar.	-do-
13	-do-	122-Sonpur	Amod Kumar Singh S/O- Prahlad Singh, Vill+Po- Bharpura, PS- Sonpur, District- Saran, Bihar.	-do-
14	-do-	142-Bachhwara	Naresh Paswan Vill- Azad nagar, PO- Bachhwara, Ward No- 8, Dist- Begusarai, Bihar.	-do-
15	-do-	153-Gopalpur	MD. Aishaan AT- Ujani, P.O- Maniyamore, P.S- Naugachia, Dist- Bhagalpur, Bihar.	-do-
16	-do-	-do-	Sunil Kumar AT- Pratapnagar, P.O- Dholbajja, P.S- Dholbajja, Dist- Bhagalpur, Bihar.	-do-
17	-do-	154-Pairpanti(SC)	Hiralal Paswan Vill- Malikpur, PO-Pirpanti Bazar, PS- Pirpanti, Dist- Bhagalpur, Bihar.	-do-
18	-do-	-do-	Shivnarayan Pawan Urf Shivilal Paswan Vill- Baraini, PO-Baraini, PS- Kahalgaon, Dist- Bhagalpur, Bihar.	-do-

S. No.	Particulars of Election	Number & Name of the Constituency	Name & Address of the Candidate	Reason of disqualification
1	2	3	4	5
19	General Election to the Bihar Legislative Assembly 2015	155-Kahalgaon	Binod Pandey At-Bakharpur, P.O- Bakharpur, P.S- Pirpanti, Dist- Bhagalpur, Bihar.	-do-
20	-do-	181-Digha	Pramod Kumar Singh Vill- Hasanpur, Post+P.S- Beur, Dist.- Patna, Bihar.	Failure to lodge any account of Election expenses
21	-do-	191-Bikram	Surendra Yadav Vill- Nijampur Tola, P.O- Danara, Bikram, Patna, Bihar.	-do-
22	-do-	-do-	Santosh Kumar Vill.-Mulahimpur, P.O.- Amhara, Bihta, Patna, Bihar	-do-
23	-do-	206- Chainpur	Parmeshwar Singh Vill- Bhandha, P.O+P.S- Adhaura, Dist- Kaimur (Bhabua), Bihar.	-do-
24	-do-	209-Kargahar	Pankaj Kumar Singh Vill- Dariyapur, P.O- Bhaisawan, P.S- Masaudhi, Dist- Rohtas. Bihar.	-do-

[No. 76/ORDER/ES-1/ BR-LA /2015]

By Order,

SUMIT MUKHERJEE, Principal Secy.

आदेश

नई दिल्ली, 8 अगस्त, 2017

आ.अ. 51.—यतः निर्वाचन आयोग का समाधान हो गया है कि नीचे की सारणी के स्तम्भ (2) में यथा विनिर्दिष्ट छत्तीसगढ़ राज्य से विधान सभा के साधारण निर्वाचन, 2013 के लिए जो स्तम्भ (3) में विनिर्दिष्ट निर्वाचन क्षेत्र से हुआ है स्तम्भ (4) में उसके सामने विनिर्दिष्ट निर्वाचन लड़ने वाले प्रत्येक अभ्यर्थी, लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्धीन बनाए गए नियमों द्वारा अपेक्षित उक्त सारणी के स्तम्भ (5) में यथादर्शित अपने निर्वाचन व्ययों का कोई भी लेखा दाखिल करने अथवा रीति के अनुसार लेखा दाखिल करने में असफल रहे हैं;

और, यतः उक्त अभ्यर्थियों ने, सम्यक् सूचना दिए जाने पर भी उक्त असफलता के लिए कोई कारण अथवा स्पष्टीकरण नहीं दिया है या उनके द्वारा दिये गये अभ्यावेदनों पर, यदि कोई हो, विचार करने के पश्चात् निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिए कोई पर्याप्त कारण या न्यायौचित्य नहीं है।

अतः अब, निर्वाचन आयोग उक्त अधिनियम की धारा 10-क के अनुसरण में नीचे की सारणी के स्तम्भ (4) में विनिर्दिष्ट व्यक्तियों को संसद के किसी भी सदन के या किसी राज्य/संघ राज्य की विधान सभा अथवा विधान परिषद् के सदस्य चुने जाने और सदस्य होने के लिए इस आदेश की तारीख से तीन वर्ष की कालावधि के लिए निरर्हित घोषित करता है :-

## सारणी

क्रम सं.	निर्वाचन का विवरण	विधान सभा निर्वाचन क्षेत्र की संख्या व नाम	अभ्यर्थी का नाम व पता	निर्हरता का कारण
1	2	3	4	5
1	छत्तीसगढ़ विधान सभा का साधारण निर्वाचन, 2013	24—मरवाही (अ.ज.जा.)	घासीराम वाकरे ग्राम+पोस्ट कोटमीकला तहसील पेण्ड्रा जिला—बिलासपुर, छत्तीसगढ़।	निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहे।
2	—वही—	—वही—	थान सिंह ओट्टी ग्राम—बरौर, पो.आ. बगडार तहसील मरवाही जिला— बिलासपुर, छत्तीसगढ़।	—वही—

[सं. 76/छ.ग.—वि.स./2013]

आदेश से,

के. एन. भार, प्रधान सचिव

## ORDER

New Delhi, the 8th August, 2017

**O.N. 51.**— Whereas, the Election Commission is satisfied that each of the contesting candidates specified in column (4) of the Table below at the General Election to the Legislative Assembly, 2013 from the State of Chhattisgarh as specified in column (2) held from the constituency specified in column(3) against his/her name, has failed to lodge any account of his/her election expenses at all or in the manner as required by the Representation of the People Act, 1951, and the rules made thereunder as shown in column(5) of the said Table;

And Whereas, the said candidates have either not furnished any reason or explanation for the said failure even after due notice of the Election Commission, or after considering the representation if any, made by them, the Election Commission is satisfied that they have no good reason or justification for the said failure;

Now, therefore, pursuance of Section 10A of the said Act, the Election Commission hereby declares the persons specified in column (4) of the Table below to be disqualified for being chosen as, and for being a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of a State/Union Territory for a period of three years from the date of this order:-

TABLE

S. No.	Particulars of Election	Number &Name of the Assembly Constituency	Name &Address of the Candidate	Reason of disqualification
1	2	3	4	5
1	General Election to the Legislative Assembly 2013 from the State of Chhattisgarh	24-Marwahi (ST)	Ghasiram Wakre Village+Post- Kotmikala, Tehsil Pendra, District- Bilaspur, Chhattisgarh.	Failure to lodge any account of election expenses
2	-Do-	-Do-	Than Singh Otti Village- Baror, Post- Bagrar, Tehsil-Marwahi, District- Bilaspur, Chhattisgarh.	-Do-

[No. 76/CG-LA/2013]

By Order,

K. N. BHAR, Principal Secy.

नई दिल्ली, 29 अगस्त, 2017

**आ.अ. 52.**—लोक प्रतिनिधित्व अधिनियम 1951 (1951 की 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग हरियाणा राज्य से राज्य सभा के लिए सदस्य के रूप में श्री सुभाष चन्द्र और अन्य के निर्वाचन पर प्रश्न उठाते हुए श्री आर. के. आनंद द्वारा दर्ज की गई 2016 की निर्वाचन याचिका सं. 1 पर चंडीगढ़ स्थित पंजाब और हरियाणा उच्च न्यायालय के दिनांक 23 मार्च 2017 के आदेश को एतद्वारा प्रकाशित करता है।

(आदेश अधिसूचना के अंग्रेजी भाग में छपा है)

[सं. 82/रा.स.-एच.आर./1/16/2017-बी.ई.]

आदेश से,

वरिन्दर कुमार, प्रधान सचिव

New Delhi, the 29th August, 2017

**O.N. 52.**—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the order dated 23<sup>rd</sup> March, 2017 of the High Court of Punjab and Haryana at Chandigarh dismissing the Election Petition No. 1 of 2016 filed by Shri R. K. Anand calling in question the election of Shri Subhash Chandra and another as the Members of the Council of States from the State of Haryana.

**In the High Court of Punjab and Haryana at Chandigarh**

C.M. No. 2-E of 2017 in/and  
Election Petition No. 1 of 2016  
Reserved on: 15.03.2017

Date of Decision: March 23, 2017

R. K. ANAND

...Petitioner

Versus

Subhash Chandra and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI****Present:**

Mr. Mohan Jain, Sr. Advocate with  
Mr. Vikram Jain, Mr. Arastu Chopra,  
Mr. Fateh Saini and Mr. Anoop Mishra, Advocates,  
for the applicant / respondent No.1.

Mr. M.L. Saggar, Sr. Advocate with  
Mr. Armaan Saggar, Advocate,  
for the non-applicant/petitioner.

Mr. Satya Pal Jain, Sr. Advocate with  
Mr. Dheeraj Jain, Advocate,  
for respondent No. 2.

**P. B. Bajanthri, J.**

1. For the purpose of identifying the parties, it is referred as Election Petitioner and respondent No.1. Respondent No.1 presented the above civil misc. application under Section 151, Order VI Rule 15 and Order VII Rule 11 of the Code of Civil Procedure, 1908 (for short 'CPC') read with Section 83 of the Representation of People Act, 1951 (for short 'Act, 1951'), Rule 94-A of the Conduct of Election Rules, 1961 (for short 'Rules, 1961') and Form 25 to dismiss the election petition No. 1 of 2016.
2. Two seats allocated to the State of Haryana in the Rajya Sabha were to fall vacant on 02.08.2016. Thus, a notification was issued on 1 of 34.

24.05.2016 under Section 12 of the Representation of the People Act, 1951 (for short “Act 1951”) by the President of India. The Election Commission of India also issued a notification on 24.05.2016 under Section 39 of the Act 1951 while laying down the schedule of the election. On 11.06.2016 date of poll was fixed during the time 9.00 A.M. To 4.00 P.M. at Old Committee Room, Haryana Vidhan Sabha Secretariat, Chandigarh. The election petitioner, respondents No.1 and 2 are the candidates for two seats of the members of the Rajya Sabha. Respondents No.1 and 2 were elected. The election petitioner, who was the candidate for one of the Rajya Sabha seat filed election petition under Section 81 of the Act, 1951 calling in question the election of respondents No.1 and 2 as members of the Rajya Sabha from the Haryana State and to conduct a fresh election to elect two members from the State of Haryana or in the alternative questioned the election of respondent No.1 and to declare the election petitioner as duly elected member of the Rajya Sabha from Haryana State under Section 101 of the Act, 1951, on the allegations that election was conducted in a fraudulent manner in violation of the basic principle of the conduct of elections in just, fair and transparent manner. It was further alleged that applicant -respondent No.3 – returning officer whose name has been deleted vide order dated 14.02.2017, had formed an unholy alliance with respondents No.1 and 2, the returned candidates, in order to defeat the election petitioner. The applicant/returning officer misconduct himself in furtherance of the modus operandi of swapping the original violet ink sketch pen during the polling on 11.06.2016 by respondents No.1 and 2, the returned candidates, by arranging a deceptively similarly royal blue ink sketch pen in order to manipulate the rejection of valid first preference votes of the election petitioner.

3. First respondent has filed statement of objections to the election petition No.1 of 2016. Before commencement of trial, respondent No. 1 submitted the present civil misc. application for dismissal of the election petition for non-compliance of various provisions cited supra.

4. Learned counsel for respondent no.1 submitted that proviso to Section 83 of Act, 1951 read with Rule 94-A of Rules, 1961 and Form 25 have not been complied in filing the election petition. Consequently, under Order VII, Rule 11(d) of CPC, election petition is liable to be rejected.

5. Learned counsel for respondent No.1 relied on decision of the Apex Court in **R. K. Roja vs. U.S. Rayudu and another**, reported in **2016AIR (SC) 3282 (Para Nos. 2 and 5)** to contend that petition falls under Order VII, Rule 11(d) of CPC.

6. Further learned counsel for respondent No.1 submitted that Section 123(2), (7) (a) read with definition under Section 2(c) of Act, 1951 is attracted in the present petition, whereas election petitioner has not complied the aforesaid provisions while presenting the election petition. It was also contended that reading of paragraph nos. 10, 11, 13, 14, 16, 22 and 30 of the election petition, wherein allegations have been made insofar as election process. Para nos. 10, 11, 13, 14, 16, 22 and 30 of the election petition reads as under:-

“10. That the rejection of 12 first preference votes of the election petitioner by the Returning Officer was not only a matter of anguish but also shocked the election petitioners well as the 12 M.L.As., member of the electoral college, who had cast their first preference vote in favour of the election petitioner. The election petitioner made complaints dated 12.06.2016 and 13.06.2016 to the Election Commission of India complaining that the election has been conducted in a fraudulent manner by respondent No. 3, the Returning Officer in connivance with respondent No. 1 and 2, the returned candidates had been manipulated to defeat the election petitioner in a clandestine manner facilitating the rejection of 12 valid first preference votes of the election petitioner. The casting of the votes had been video-graphed by the Returning Officer which later on revealed the modus operandi of manipulation of the election to be conducted in a fraudulent manner. The election petitioner also made a complaint dated 14.06.2016 to the Inspector General of Police, Chandigarh and Station House Officer, Police Station Sector 3, Chandigarh. 11. That the election of respondent No. 1 and 2, the returned candidates is liable to be set aside under Section 100 (1)(d) (iii) & (iv) of the Act as the election was conducted in a fraudulent manner in violation of the basic principle of the conduct of elections in a just, fair and transparent manner. The respondent No. 3, the Returning Officer had formed an unholy alliance with respondent No. 1 and 2, the returned candidates, in order to defeat the election petitioner in a preconceived, predesigned and meticulously planned modus operandi to be adopted during the casting of the votes to reject the first preference votes of the election petitioner with an ulterior motive so that respondent No. 1 and 2, the returned candidates are elected. During the counting of votes, the 12 valid first preference votes of the election petitioner were wrongly rejected by respondent No. 3, the Returning Officer, who had connived with respondents No. 1 and 2 and violated the mandate of the Constitution, the provisions of the Act and the Rules to 4 of 34 conduct the elections in a just, fair and transparent manner. The rejection of 12 first preference votes in clandestine manner has materially polluted the entire democratic process of conducting the elections in just, fair and transparent manner. Therefore, the election of respondents No. 1 and 2, the returned candidates, is liable to be held for election of two members of the Rajya Sabha from the State of Haryana.

13. That on the directions of the Election Commission of India, an enquiry was conducted by Shri B.S. Dahiya, Chief Electoral Officer, Haryana. During the hearing on 25.06.2016 by him, the videography of the polling was displayed in the presence of respondent No. 3, the Returning Officer. However, respondent No. 1 and 2, the returning candidates did not attend the hearing. The viewing of the video clinches that the elections were conducted in a fraudulent manner by respondent No. 3, the returning officer, in connivance with respondent No. 1 and 2, the returned candidates. During the



hearing, the respondent No. 3, the returning officer, stated that he had received the violet ink sketch pen to be used during the polling on 11.06.2016 by the members of the electoral college to respondent No. 1 and 2, the returned candidates. The respondent No. 3, Returning Officer thus mis-conducted himself in furtherance of the modus operandi of swapping the original violet ink sketch pen during the polling on 11.06.2016 by respondents No. 1 and 2, the returned candidates, by arranging a deceptively similarly royal blue ink sketch pen in order to manipulate the rejection of valid first preference votes of the election petitioner. The respondent No. 3, the Returning Officer facilitated the photography of the violet ink sketch pen and the marking of the same on a paper so that the sinister purpose of rejection of the valid votes of the election petitioner is meticulously given effect to by arranging a deceptively similar royal blue ink sketch pen also similarly resembling the violet colour ink sketch pen in shape. However, the election petitioner was kept in dark by respondent No. 3, the Returning Officer. The minutes of the meeting held on 25.06.2016 were also video graphed.

14. That viewing of the videography of the polling held on 11.06.2016 establishes beyond any shadow of doubt that there has been a preconceived, preplanned, predesigned unholy alliance among respondent No. 3, the Returning Officer, the respondent No. 1 and 2, the returned candidates, the election agent Shri Avindra Mohan of respondent No. 1, one of the returned candidates, Shri Aseem Goyal an M.L.A. of BJP and Bhai Jai Parkash an independent M.L.A. of the Haryana Legislative Assembly.

16. That the respondent No. 3, the Returning Officer should have suspended the voting when Sh. Barwala was found with one of sketch pens from the voting compartment and should have informed the Election Commission of India and got instructions for the conduct of the election. However, the respondent No. 3, the Returning Officer without enquiring into how the sketch pen had reached the voting compartment though not supplied by the respondent No. 3, the Returning Officer, clearly establishes his complicity and connivance with respondent No.1 and 2, the returned candidates.

22. That during the counting of the votes, the respondent No.1, one of the two returned candidates, who had the knowledge of the use of the fraudulently replaced royalblue ink sketch pen during the polling started objecting to each and every ballot paper, which was cast in favour of the election petitioner on the ground that ink sketch pen of a different colour has been used to mark the first preference vote in favour of the election petitioner. Initially only four ballot papers were found by respondent No. 3, the Returning Officer of a different colour out of 33 valid votes of the election petitioner and were rejected. The 29 ballot papers were found to be valid. The respondent No. 1 one of the returned candidates again raised objections that the votes of the election petitioner should be again scrutinized. The respondent No. 3, the Returning Officer made a further scrutiny with the help of additional light from his mobile phone and found that 8 more ballot papers had been marked with the sketch pen having royal blue ink instead of the sketch pen having violet colour ink and rejected the same. However, in all the 12 ballot papers, the first preference had been cast in favour of the election petitioners. The respondent No. 3, the Returning Officer erroneously rejected the 12 ballot papers on the ground that preferences were marked upon by the voters by a different colour sketch pen.

30. That the election petitioner has come to know that the respondent No. 1, one of the two returned candidates had come to Chandigarh through a Chartered Aircraft on 10.06.2016 at 12.05 p.m. noon and had met the Returning Officer.

The Returning Officer admitted during the hearing on 25.06.2016 that he had shown the violet ink sketch pens to respondent No.1 and 2, the returned candidates, which were to be provided to the voters for marking the preferences on the ballot papers to be issued to the mduring the course of election on 11.06.2016. Thus, respondent No. 3, the returning officer, had thus facilitated the procurement of a similarly shaped sketch pen of royal blue ink deceptively resembling with the violet ink sketchpen to be misused during the voting on 11.06.2016, by permitting the marking of violet sketch pen on a paper and its photographs on mobile phone. The respondent No. 1, one of the returned candidates left Chandigarh on 10.06.2016 at 07.35 PM for Delhi. It is thus clearly established that the sinister purpose of the respondent No. 1, one of the returned candidates to visit Chandigarh on 10.06.2016 was to visited spondent No. 3, the Returning Officer and to seek for himself the violet ink sketch pen(s) which was received by the returning officer on 09.06.2016 afternoon not to leave any chance for arranging a similarly shaped royal blue in ksketch pen. The respondent No. 1, one of the returned candidates reached Chandigarh on 11.06.2016 from Delhi at 06.25 AM. Thus, it is abundantly clear that the clandestine exercise was meticulously planned and executed so that respondent No. 1 and 2, the Returned Candidates are made to win the elections by making the mockery of the just, fair and transparent election process in a democracy.”

Contents of the above paragraphs show that there is non-compliance of Section 123(2)(7)(d) of Act, 1951 (allegations have been made against MLAs and Returning Candidate which fall under Section 123(7)(d) of Act, 1951). Thus, election petition is liable to be rejected. Section 83 of Act 1951, Rule 94A and Form 25 of Rules 1961 are required to be complied by the election petitioner.

7. Learned counsel for first respondent relied on the following decisions in support of CM No. 2-E of 2017 to dismiss the election petition:-

**1) (2000) 2 SCC 294 – V. Narayanaswamy vs. C.P. Thirunavukkarasu**, Supreme Court in para No. 23 held as under:-

“23. It will be thus seen that an election petition is based on the rights, which are purely the creature of statute, and if the statute renders any particular requirement mandatory, the court cannot exercise dispensing powers to waive non-compliance.

For the purpose of considering a preliminary objection as to the maintainability of the election petition the averments in the petition should be assumed to be true and the court has to find out whether these averments disclose a cause of action or a triable issue as such. Sections 81, 83(1)(c) and 86 read with Rule 94-A of the Rules and Form 25 are to be read conjointly as an integral scheme. When so read if the court finds non-compliance it has to uphold the preliminary objection and has no option except to dismiss the petition. There is difference between "material facts" and "material particulars". While the failure to plead material facts is fatal to the election petition the absence of material particulars can be cured at a later stage by an appropriate amendment. "Material facts" mean the entire bundle of facts, which would constitute complete cause of action and these must be concisely stated in the election petition, i.e., clause (a) of sub-section (1) of Section 83. Then under clause (b) of sub-section (1) of Section 83 the election petition must contain full particulars of any corrupt practice. These particulars are obviously different from material facts on which the petition is founded. A petition levelling a charge of corrupt practice is required by law to be supported by an affidavit and the election petitioner is obliged to disclose his source of information in respect of the commission of corrupt practice. He must state which of the allegations are true to his knowledge and which to his belief on information received and believed by him to be true. It is not the form of the affidavit but its substance that matters. To plead corrupt practice as contemplated by law it has to be specifically alleged that the corrupt practices were committed with the consent of the candidate and that a particular electoral right of a person was affected. It cannot be left to time, chance or conjecture for the court to draw inference by adopting an involved process of reasoning. Where the alleged corrupt practice is open to two equal possible inferences the pleadings of corrupt practice must fail. Where several paragraphs of the election petition alleging corrupt practices remain unaffirmed under the verification clause as well as the affidavit, the unsworn allegation could have no legal existence and the Court could not take cognizance thereof. Charge of corrupt practice being quasicriminal in nature the court must always insist on strict compliance with the provisions of law. In such a case it is equally essential that the particulars of the charge of all allegations are clearly and precisely stated in the petition. It is the violation of the provisions of Section 81 of the Act which can attract the application of the doctrine of substantial compliance. The defect of the type provided in Section 83 of the Act on the other hand can be dealt with under the doctrine of curability, on the principles contained in the Code of Civil Procedure. Non-compliance with the provisions of Section 83 may lead to dismissal of the petition if the matter falls within the scope of Order 6, Rule 16 and Order 7, Rule 11 of the Code of Civil Procedure. Where neither the verification in the petition nor the affidavit gives any indication of the sources of information of the petitioner as to the facts stated in the petition which are not to his knowledge and the petitioner persists that the verification is correct and affidavit in the form prescribed does not suffer from any defect the allegations of corrupt practices cannot be inquired and tried at all. In such a case petition has to be rejected on the three grounds for non-compliance with the mandatory provisions of law as to pleadings. It is no part of duty of the court suo moto even to direct furnishing of better particulars when objection is raised by other side. Where the petition does not disclose any cause of action it has to be rejected. Court, however, cannot dissect the pleadings into several parts and consider whether each one of them discloses a cause of action. Petition has to be considered as a whole. There cannot be a partial rejection of the petition.”

**2) (2015) 11 SCC 628 – Tata Chemicals Limited vs. Commissioner of Customs (Preventive) Jamnagar**, Supreme Court in para No. 18 held as under:-

“18. The Tribunal’s judgment has proceeded on the basis that even though the samples were drawn contrary to law, the appellants would be estopped because their representative was present when the samples were drawn and they did not object immediately. This is a complete perverse finding both on fact and law. On fact, it has been more than amply proved that no representative of the appellant was, in fact, present at the time the Customs Inspector took the samples. Shri K.M. Jani who was allegedly present not only stated that he did not represent the Clearing Agent of the appellants in that he was not their employee but also stated that he was not present when the samples were taken. In fact, therefore, there was no representative of the appellants when the samples were taken. In law equally the Tribunal ought to have realized that there can be no estoppel against law. If the law requires that something be done in a particular manner, it must be done in that manner, and if not done in that manner has no existence in the eye of law at all. The Customs Authorities are not absolved from following the law depending upon the acts of a particular assessee. Something that is illegal cannot convert itself into something legal by the act of a third person.”

**3) (2000) 1 SCC 481 – R.P. Moidutty vs. P.T. Kunju Mohammad and another**, Supreme Court in para No. 14 held as under:-

“14. It is basic to the law of elections and election petitions that in a democracy, the mandate of the people as expressed at the hustings must prevail and be respected by the Courts and that is why the election of a successful candidate is not to be set aside lightly. Heavy onus lies on the election petitioner seeking setting aside of the election of a successful candidate to make out a clear case for such relief both in the pleadings and at the trial. The mandate of the people is

one as has been truly, freely and purely expressed. The electoral process in a democracy such as ours is too sacrosanct to be permitted to be polluted by corrupt practices. If the court arrives at a finding of commission of corrupt practice by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent then the election of the returned candidate shall be declared to be void. The underlying principle is that corrupt practice having been committed, the result of the election does not echo the true voice of the people. As the consequences flowing from the proof of corrupt practice at the election are serious, the onus of establishing commission of corrupt practice lies heavily on the person who alleges the same. The onus of proof is not discharged merely on preponderance of probabilities; the standard of proof required is akin to that of proving a criminal or a quasiminal charge. Clear cut evidence, wholly credible and reliable, is needed to prove beyond doubt the charge of corrupt practice. [See: Ram Chandra Rai vs. State of Madhya Pradesh & Ors. (1970) 3 SCC 647; Manphul Singh vs. Surinder Singh AIR 1973 SC 2158; Rahim Khan vs. Khurshid Ahmed and others AIR 1975 SC 290; Bir Chandra Barman vs. Shri Anil Sarkar and others AIR 1976 SC 603; Lakshmi Raman Acharya vs. Chandan Singh and others AIR 1977 SC 587; Amolak Chand Chhazad vs. Bhagwandas Arya (Dead) and anr. AIR 1977 SC 813]. The legislature has taken extra care to make special provision for pleadings in an election petition alleging corrupt practice. Under Section 83 of the Act ordinarily it would suffice if the election petition contains a concise statement of the material facts relied on by the petitioner, but in the case of corrupt practice the election petition must set forth full particulars thereof including as full a statement as possible of (i) the names of the parties alleged to have committed such corrupt practice, (ii) the date, and (iii) place of the commission of each such practice. An election petition is required to be signed and verified in the same manner as is laid down in the Code of Civil Procedure, 1908 for the verification of pleadings.

However, if the petition alleges any corrupt practice then the petition has additionally to be accompanied by an affidavit in Form No. 2 5 prescribed by rule 94A of the Conduct of Elections Rules, 1961 in support of the allegations of such corrupt practice and the particulars thereof. Thus, an election petition alleging commission of corrupt practice has to satisfy some additional requirements, mandatory in nature, in the matter of raising of the pleadings and verifying the averments at the stage of filing of the election petition and then in the matter of discharging the onus of proof at the stage of the trial.”

**4) (1986) (Supp) SCC 315 – Azhar Hussain vs. Rajiv Gandhi**, Supreme Court in para No. 14 held as under:-

“14. Before we deal with these grounds seriatim, we consider it appropriate to restate the settled position of law as it emerges from the numerous decisions of this Court which have been cited before us in regard to the question as to what exactly is the content of the expression ‘material facts and particulars’, which the election petitioner shall incorporate in his petition by virtue of Section 83(1) of the Act.

(1) What are material facts and particulars? Material facts are facts which if established had would give the petitioner the relief asked for. The test required to be answered is whether the Court could have given a direct verdict in favour of the election petitioner in case the returned candidate had not appeared to oppose the election petition on the basis of the facts pleaded in the petition. *Manubhai Nandlal Amarsey v. Popatlal Manilal Joshi & Ors.*, [1969] 3 S.C.R. 217.

(2) In regard to the alleged corrupt practice pertaining to the assistance obtained from a Government servant, the following facts are essential to clothe the petition with a cause of action which will call for an answer from the returned candidate and must therefore be pleaded. *Hardwari Lal v. Kanwal Singh*, [1972] 2 S.C.R. 742:

a) mode of assistance;

b) measure of assistance; and

c) all various forms of facts pertaining to the assistance.

(3) In the context of an allegation as regards procuring, obtaining, abetting or attempting to obtain or procure the assistance of Government servants in election it is absolutely essential to lead the following :

a) kind or form of assistance obtained or procured;

b) in what manner the assistance was obtained or procured or attempted to be obtained or procured by the election candidate for promoting the prospects of his election *Hardware Lal v. Kanwal Singh*. (supra)

(4) The returned candidate must be told as to what assistance he was supposed to have sought, the type of assistance, the manner of assistance, the time of assistance, the persons from whom the actual and specific assistance was procured *Hardwari Lal v. Kanwal Singh* (supra)

(5) There must also be a statement in the election petition describing the manner in which the prospects of the election was furthered and the way in which the assistance was rendered. *Hardwari Lal v. Kanwal Singh* (supra).

(6) The election petitioner must state with exactness the time of assistance, the manner of assistance, the persons from whom assistance was obtained or procured, the time and date of the same, all these will have to be set out in the particulars *Hardwari Lal v. Kanwal Singh* (supra).”

**5) (2013) 4 SCC 776 – G.M. Siddeshwar vs. Prasanna Kumar**, Supreme Court in paragraphs No. 35, 36, 37, 48 to 52 held as under:-

**“Defenctive affidavit**

35. What exactly are the contents of an affidavit in Form No. 25 as prescribed by Rule 94-A of the Rules? The format reads as follows:

“Form 25  
(see Rule 94A)  
AFFIDAVIT  
XXXXXXXXXX XXX XXXX

36. Prasanna Kumar’s affidavit accompanying the election petition reads as follows:

“Form 25  
(Rule 94-A)  
In The High Court of Karnataka at Bangalore  
(Original Jurisdiction)  
Election Petition No. 2/2009

**Between:**

Prasanna Kumar

... Petitioner

And

Sri G.M. Siddeshwar and Ors

... Respondents

Affidavit

I, Prasanna Kumar, the petitioner in the accompanying Election petition, calling in question the election of Sri G. M. Siddeshwar (1st respondent in the said petition) make solemn and affirmation on oath and say-

- (a) That I am an elector in 13 Davanagere Lok Sabha Constituency in Harihar Assembly Segment and I am fully aware and acquainted with the facts of the case and swear to this affidavit,
- (b) That the statements made in paragraphs 1, 2, 3, 5, 7, 8, 11, 12 and 13 & 14 of the accompanying Election Petition about the violation of the law during the conduct of election and the particulars mentioned in the above noted paragraphs are true to my knowledge and contents of paras 18, 19, 20 and 21 are based on legal advice;
- (c) That the statements made in paragraphs 3, 4, 6, 8, 9, 10, 15 and 16 of the accompanying Election Petition about the commission of electoral offence of corrupt practices and the particulars mentioned in the said paragraphs of the petition are true to my knowledge and partly on Information.
- (d) That Annexures - 1 to 14 and 18, 19, 20, 22, 23, 24 are true copies and 15, 16, 17, 21 are original copies.

Sd/-

Signature of the Deponent

Solemnly affirmed/sworn to by Sri Prasanna Kumar at

Bangalore, this 18-6-2009.

Sd/-

Identified by me

Sd/-

corrections: (nil).

sworn to before me”

37. A perusal of the affidavit furnished by Prasanna Kumar ex facie indicates that it was not in absolute compliance with the format affidavit. However, we endorse the view of the High Court that on a perusal of the affidavit, undoubtedly there was substantial compliance with the prescribed format. It is correct that the verification was also defective, but the defect is curable and cannot be held fatal to the maintainability of the election petition.

48. The broad principle laid down in Murarka was somewhat restricted by another Constitution Bench decision rendered in Ch. Subba Rao v. Member, Election Tribunal, Hyderabad [1964] 6 SCR 213. In that case, the Constitution Bench introduced two clear principles: firstly, that

“if there is a total and complete non compliance with the provisions of Section 81(3), the election petition might not be “an election petition presented in accordance with the provisions of this part” within Section 80 of the Act” and secondly, that “if there is a substantial compliance with the requirement of Section 81(3), the election petition cannot be dismissed by the Tribunal under Section 90(3).”

49. In *T.M. Jacob v. C. Poulouse & Ors.*, (1999) 4 SCC 274 this Court reiterated the doctrine of substantial compliance as mentioned in *Murarka Radhey Shyam Ram Kumar and Ch. Subba Rao* and also introduced the doctrine of curability on the principles contained in the CPC. It was held that the defect in the affidavit in that case was curable and was not of such a fatal nature as to attract dismissal of the election petition at the threshold.

50. The doctrine of substantial compliance as well as the doctrine of curability were followed in *V. Narayanaswamy v. C. P. Thirunavukkarasu*, (2000) 2 SCC 294. This Court held that a defect in verification of an affidavit is not fatal to the election petition and it could be cured. Following *Moidutty* it was held that if the election petition falls foul of Order VI Rule 16 and Order VII Rule 11 of the CPC and does not disclose a cause of action then it has to be rejected at the threshold.

51. Somewhat more recently, in *Anil Vasudev Salgaonkar v. Naresh Kushali Shigaonkar*, (2009) 9 SCC 310 this Court reiterated this position in law and held: (SCC P.324, para 50)

“50. The position is well settled that an election petition can be summarily dismissed if it does not furnish the cause of action in exercise of the power under the Code of Civil Procedure. Appropriate orders in exercise of powers under the Code can be passed if the mandatory requirements enjoined by Section 83 of the Act to incorporate the material facts in the election petition are not complied with.”

52. The principles emerging from these decisions are that although non-compliance with the provisions of Section 83 of the Act is a curable defect, yet there must be substantial compliance with the provisions thereof. However, if there is total and complete non-compliance with the provisions of Section 83 of the Act, then the petition cannot be described as an election petition and may be dismissed at the threshold.”

**6) (2015) 3 SCC 467 – Krishnamoorthy vs. Sivakumar and others**, Supreme Court in para no. 58 held as under:-

“58. From the aforesaid authorities, the following principles can be culled out:-

58.1. The words “undue influence” are not to be understood or conferred a meaning in the context of English statute.

58.2 The Indian election law pays regard to the use of such influence having the tendency to bring about the result that has contemplated in the clause.

58.3 If an act which is calculated to interfere with the free exercise of electoral right, is the true and effective test whether or not a candidate is guilty of undue influence.

58.4 The words “direct or indirect” used in the provision have their significance and they are to be applied bearing in mind the factual context.

58.5. Canvassing by a Minister or an issue of a whip in the form of a request is permissible unless there is compulsion on the electorate to vote in the manner indicated.

58.6. The structure of the provisions contained in section 171-C of IPC are to be kept in view while appreciating the expression of ‘undue influence’ used in section 123(2) of the 1951 Act.

58.7 The two provisos added to Section 123(2) do not take away the effect of the principal or main provision.

58.8. Freedom in the exercise of judgment which engulfs a voter’s right, a free choice, in selecting the candidate whom he believes to be best fitted to represent the constituency, has to be given due weightage.

58.9. There should never be tyranny over the mind which would put fetters and scuttle the free exercise of an electorate.

58.10 The concept of undue influence applies at both the stages, namely, pre-voting and at the time of casting of vote.

58.11 “Undue influence” is not to be equated with “proper influence” and, therefore, legitimate canvassing is permissible in a democratic set up.

58.12 Free exercise of electoral right has a nexus with direct or indirect interference or attempt to interfere.”

8. It was further pointed out that election petitioner in his reply to cm No.2-E of 2017 has contended that affidavit in support of election petition was filed to avoid in a technical objection and also pointed out that there is a defect in the affidavit supporting the reply to CM No.2-E of 2017.

9. Per contra, learned counsel for the election petitioner submitted that election petition has been filed to declare election to be void under Section 100 (d) read with Section 101 of Act 1951. It was contended that third respondent has not been arrayed as a party to the election petition in his official capacity. On the other hand, he has been arrayed as a party by name, rejection of valid votes on that count under Section 100 (1) (d) (iii) and (2) of Act, 1951 that rejection of the petitioner's vote. In other words, election petition is restricted to under Section 83 (1) read with Section 100 (1) (d) (iii) (iv) and Section 101(b) of Act, 1951. He has not alleged any corruption against the respondents. His entire election petition is based on material facts which is supported by verification and affidavit under Order VI, Rule 15(4) CPC. Therefore, question of non-compliance of proviso to Section 83 and Section 123 of Act, 1951, Rule 94A and Form 25 of Rules, 1961 so as to contend that election petition is liable to be rejected under Order VII Rule 11(d) CPC. It was also submitted that having regard to the pleadings made in the election petition would not attract Section 123 of Act, 1951 which relates to corrupt practices. Therefore, election petitioner need not comply the aforesaid provisions unless and until election petitioner seeks declaration that election to be void on the allegations of corruption, when he has not pleaded that there were corrupt practices against the respondents.

10. The election petitioner has presented election petition along with verification and affidavit only to avoid technical objection, if any. Filing of verification and affidavit do not vitiate non-compliance of any provisions of Act, 1951. Order VI Rule 16 of CPC relates to striking out pleadings which is permissible, therefore, Order VII Rule 11 - rejection of plaint is not at all applicable. Since the petitioner has not made any allegations of corruption, therefore, challenge to the election is to the extent that it is materially affected. Therefore, he has sought for declaration under Section 100(1)(d)(iii) and (iv) of Act, 1951 to declare election to be void. Learned counsel for the election petitioner cited the following decisions:-

**1. (2013) 4 SCC 776 – G.M. Siddeshwar vs. Prasanna Kumar** Supreme Court in paragraphs no. 20 and 62 held as under:-

“20. The submission made by learned counsel is to the effect that in addition to an affidavit required to be filed inform No.25 prescribed by Rule 94-A of the Rules in support of allegations made of corrupt practices by the returned candidate, an election petitioner is also required to file an affidavit in support of the election petition keeping in mind the requirement of Order VI Rule 15(4) of the CPC.

62. Applying these principles to the facts of the present case, it seems quite clear that the affidavit filed by Prasanna Kumar in compliance with the requirements of the proviso to Section 83(1) of the Act was not an integral part of the election petition, and no such case was set up. It also seems quite clear that the affidavit was in substantial compliance with the requirements of the law. Therefore, the High Court was quite right in coming to the conclusion that the affidavit not being in the prescribed format of Form No.25 and with a defective verification were curable defects and that an opportunity ought to be granted to Prasanna Kumar to cure the defects.”

**2. (2004) 8 SCC 747 – Dr. Mahachandra Prasad Singh vs. Chairman, Bihar Legislative Council and others,** Supreme Court in para no.18 held as under:-

“18. There cannot be any dispute that sub-rules (1), (2) and (3) of Order 6 Rule 15 CPC were complied with. Learned counsel for the petitioner has, however, laid great emphasis on the fact that Shri Salman Rageev had not filed any affidavit in support of his petition and consequently the provisions of sub-rule (4) of Order VI Rule 15 CPC which provides that the person verifying the pleadings shall also furnish an affidavit in support of his pleadings were not complied with. For the reasons stated earlier, we are of the opinion that the provisions of Rules 6 and 7 are directory in nature and on account of non-filing of an affidavit as required by sub-rule (4) of Order VI Rule 15 CPC, the petition would not be rendered invalid nor the assumption of jurisdiction by the Chairman on its basis would be adversely effected or rendered bad in any manner. A similar contention was raised before a Bench presided by Venkatachaliah, C.J.in Ravi S. Naik v. Union of India, 1994 (Supp.) 2 SCC 641, but was repelled. The relevant portion of para 18 of the reports is being reproduced below :

"18. ....The Disqualification Rules have been framed to regulate the procedure that is to be followed by the Speaker for exercising the power conferred on him under sub-paragraph (1) of paragraph 6 of the Tenth Schedule to the Constitution. The Disqualification Rules are, therefore, procedural in nature and any violation of the same would amount to an irregularity in procedure which is immune from judicial scrutiny in view of sub-paragraph (2) of paragraph 6 as construed by this Court in Kihoto Hollohan case 1992(Supp) 2 SCC 651. Moreover, the field of judicial review in respect of the orders passed by the Speaker under sub-paragraph (1) of paragraph 6 as construed by this Court in KihotoHollohan case is confined to breaches of the constitutional mandates, mala fides, non-compliance with Rules of Natural Justice and perversity. We are unable to uphold the contention of Shri Sen that the violation of the Disqualification Rules amounts to violation of constitutional mandates. By doing so we would be elevating the rules to the status of the provisions of the Constitution which is impermissible. Since the Disqualification Rules have been framed by the Speaker in exercise of the power conferred under paragraph 8 of the Tenth Schedule they have a status subordinate to the Constitution and cannot be equated with the provisions of the Constitution. They cannot, therefore, be regarded as constitutional mandates and any violation of the Disqualification Rules does not afford ground for judicial review of the order of the Speaker in view of the finality clause contained in sub-paragraph (1) of paragraph 6 of the Tenth Schedule as construed by this Court in KihotoHollohan case."

11. It was contended that having regard to the pleadings of the Election Petition read with verification and affidavit suffice to compliance of election petition, since election petitioner has not alleged corruption in the election process. Therefore, question of compliance of Sections 83 and 123 of Act, 1951 read with rule 94-A of Rules, 1961 and Form-25 do not arise. Hence, CM No.2-E of 2017 is liable to be rejected.

12. Heard learned counsel for the parties.

13. Crux of the issue in the present CM No.2-E of 2017 arising out of EP No. 01 of 2016 are:-

i) Pleadings in the election petition falls under the purview of Section 2(c) read with Section 123 (2) (7) (d) of Act, 1951 or not?

ii) Pleadings of the election petition are restricted to only materially affected or not?

iii) Order VI Rule 16 read with Order VII Rule 11 CPC are available to the election petitioner or not?

14. Perusal of pleadings of the election petition in particularly para Nos. 10, 11, 13, 14, 16, 22 and 30 quoted supra, it is evident that election petitioner has taken the stand that election has been conducted in a fraudulent manner and unholy alliance by respondent no.3, returning officer in connivance with respondents no.1 and 2, the returning candidates had been manipulated to defeat the election petitioner in a clandestine manner. On 14.06.2016, the election petitioner filed a complaint before the Inspector General of Police, Chandigarh and Station House Officer, Police Station Sector 3, Chandigarh. Respondent No.3 – returning officer thus misused himself in furtherance of the modus operandi of swapping the original violet ink sketch pen during the polling on 11.06.2016 by arranging a deceptively similarly royal blue ink sketch pen in order to manipulate the rejection of valid first preference votes of the election petitioner. Thus, respondent no.3 – returning officer facilitated the procurement of similarly shaped sketch pen royal ink deceptively resembling with violet colour ink sketch pen to be misused during the voting on 11.06.2016. It was further alleged that respondent No.1, one of the returning candidates visit to Chandigarh on 10.06.2016 and had a meeting with respondent No.3 for the purpose of execution of their idea to defeat the election petitioner which was meticulously planned and executed. The above allegations do fall under Section 2 (c) read with Section 123 (2) (7)(a) (d) of Act, 1951 so also Rule 94-A of Rules 1961 and Form 25. The relevant provisions read as under:-

“2(c) “corrupt practice” means any of the practices specified in section 123.”

**123. Corrupt practices.**—The following shall be deemed to be corrupt practices for the purposes of this Act:—

[(1) xxxxx

2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person [with the consent of the candidate or his election agent], with the free exercise of any electoral right:

Provided that—

(a) without prejudice to the generality of the provisions of this clause any such person as is referred to therein who—

(i) threatens any candidate or any elector, or any person in whom a candidate or an elector is interested, with injury of any kind including social ostracism and ex-communication or expulsion from any caste or community; or

(ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause;

(b) a declaration of public policy, or a promise of publication, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause.

(7) The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person [with the consent of a candidate or his election agent], any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election, from any person in the service of the Government and belonging to any of the following classes, namely:—

(a) Gazetted Officers;

(b) stipendiary judges and magistrates;

(c) members of the armed forces of the Union;

(d) members of the police forces;

(e) excise officers;

[(f) revenue officers other than village revenue officers known as lambardars, malguzars, patels, deshmunks or by any other name, whose duty is to collect land revenue and who are remunerated by a share of, or commission on, the amount of land revenue collected by them but who do not discharge any police functions; and] (g) such other class of persons in the service of the Government as may be prescribed;

Provided that where any person, in the service of the Government and belonging to any of the classes aforesaid, in the discharge or purported discharge of his official duty, makes any arrangements or provides any facilities or does any other act or thing, for, to, or in relation to, any candidate or his agent or any other person acting with the consent of the candidate or his election agent (whether by reason of the office held by the candidate or for any other reason), such arrangement, facilities or act or thing shall not be deemed to be assistance for the furtherance of the prospects of that candidate's election.]

(h) class of persons in the service of a local authority, university, government company or institution or concern or undertaking appointed or deputed by the Election Commission in connection with the conduct of elections.]"

**“Rule 94-A. Form of affidavit to be filed with election petition–** The affidavit referred to in the proviso to subsection 91) of section 83 shall be sworn before a magistrate of the first class or a notary or a commissioner of oaths and shall be in Form 25.”

**“FORM 25**

(See rule 94-A)

**Affidavit**

I, \_\_\_\_\_ the petitioner in the accompanying election petition calling in question the election of Shri/Shrimati \_\_\_\_\_ (respondent No. \_\_\_\_\_ in the said petition) make solemn affirmation/oath and say –

(a) that the statements made in paragraphs \_\_\_\_\_ of the accompanying election petition about the commission of the corrupt practice of\* ..... and the particulars of such corrupt practice mentioned in paragraphs ..... of the same petition and in paragraphs ..... of the Schedule annexed thereto are true to my knowledge;

b) that the statements made in paragraphs ..... of the said petition about the commission of the corrupt practice of\* ..... and the particulars of such corrupt practice given in paragraphs ..... of the said petition and in paragraphs ..... of the Schedule annexed thereto are true to my information:

(c)(d) etc.

Signature of deponent

Solemnly affirmed/sworn by Shri/ Shrimati ..... be foreme, ..... at ..... this ..... day of ..... 20.....

Before me, Magistrate of the first class/

Notary/Commissioner of Oaths.”

\*Here specify the name of the corrupt practice.]"

It is necessary to reproduce the election petitioner's affidavit supporting the election petition, as well as, verification which reads as under:-

“IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

ELECTION PETITION NO.1 OF 2016

R. K. Anand

...Petitioner

Versus

Subhash Chandra and others

... Respondents

Affidavit of R.K. Anand son of Late Shri Roshan Lal Anand aged about 73 years Resident of : 13, Dharbanga Farm House, DLF Chattarpur, New Delhi.

I, the above named deponent do hereby solemnly affirm and declare as under:-

1. That the deponent is filing the accompanying election petition in the Hon'ble Court.



2. That the accompanying petition has been drafted as per instructions of the deponent and the contents thereof are correct. No part of it is false and nothing has been concealed therein.

Sd/-

(Deponent)

### **Verification:**

Verified that the contents of paras 1 and 2 of my above affidavit are true and correct to my knowledge. No part of it is false and nothing has been kept concealed therein.

Verified at Chandigarh.

Dated: 20.07.2016 Sd/- (Deponent)"

Perusal of the affidavit of the election petitioner read with allegations made against respondents no.1 to 3 which falls under Section 123(2)(7)(a)(d) of Act, 1951, therefore, there is no compliance of the above provisions read with Form-25. Hence, on this count CM No.2-E of 2017 is liable to be allowed.

15. The election petitioner's contention that the election petition is filed not on the ground of corruption, it is only to the extent that materially affected and in support of election petition, the grounds urged are with reference to Section 100(1)(d)(iii) and (iv) of Act 1951, therefore, Section 123(2)(7)(a)(d) of Act, 1951 and Rule 94-A and Form 25 are not at all attracted to the election petition filed by the election petitioner is concerned. Having regard to the statement made in the election petition in para nos. 10, 11, 13, 14, 16, 22 and 30, it is crystal clear that the election petitioner is making allegations against respondents no.1 to 3 and others while conducting election, therefore, Section 123(2)(7)(a)(d) of Act, 1951 read with Rule 94-A and Form 25 are attracted.

16. Learned counsel for the petitioner submitted that Order VI Rule 16 CPC read with Order VII Rule 11 is required to be taken into consideration for the purpose of deciding the present CM No.2-E of 2017. No doubt, Rule 16 relates to striking out pleadings, at the same time, the election petitioner has not inclined to take necessary steps to rectify the defects at the same time the contention of the election petitioner that Order VI Rule 16 would protect his contention. In the case of **H.D. Revanna vs. G. Puttaswamy Gowda and others** reported in (1999) 2 SCC 217, Supreme Court has held that an election petition can be dismissed for non-compliance with Sections 81, 82 and 117 of Act, 1951, but it may also be dismissed if the matter falls within the scope of Order VI Rule 16 or Order VII Rule 11 CPC. Therefore, the contention of the election petitioner and reliance on Order VI Rule 16 read with Order VII Rule 11 CPC are not available so as to reject the present CM-2-E of 2017.

17. Reading of the grounds read with affidavit which are not curable defect so as to see to the extent there is substantial compliance and it is not in the prescribed format in particularly Form-25 (affidavit). Thus, it is not a curable defect. In other words, the case in hand, the defects pointed out in the election petition as well as in the affidavit were not mere format but of a substance and, therefore ratio in **G.M. Siddeshwar's case (supra)** cited by the election petitioner is not applicable.

18. Supreme Court in the case of **C.P. John vs. Babu M. Paliserry and others**, reported in (2014) 10 SCC 547, in para nos. 34 and 35 held as under:-

"34. Mr. Chacko, learned counsel then relied upon the decision in G.M. Siddeshwar (supra). In the said decision, it was held that if there is substantial compliance with the prescribed format of the affidavit, an Election Petition cannot be thrown out on a hyper technical ground particularly when there were some defects in the format which were curable. Paragraphs 37 and 38 are relevant for our consideration which are as under:

"37. A perusal of the affidavit furnished by Prasanna Kumar ex facie indicates that it was not in absolute compliance with the format affidavit. However, we endorse the view of the High Court that on a perusal of the affidavit, undoubtedly there was substantial compliance with the prescribed format. It is correct that the verification was also defective, but the defect is curable and cannot be held fatal to the maintainability of the election petition.

38. Recently, in Ponnala Lakshmaiah v. Kommuri Pratap Reddy the issue of a failure to file an affidavit in accordance with the prescribed format came up for consideration. This is what this Court had to say: (SCC p. 802, para 28)

"28. ... The format of the affidavit is at any rate not a matter of substance. What is important and at the heart of the requirement is whether the election petitioner has made averments which are testified by him on oath, no matter in a form other than the one that is stipulated in the Rules. The absence of an affidavit or an affidavit in a form other than the one stipulated by the Rules does not by itself cause any prejudice to the successful candidate so long as the deficiency is cured by the election petitioner by filing a proper affidavit when directed to do so." We have no reason to take a different view. The contention urged by Siddeshwar is rejected."

35. A reading of the above paragraphs themselves show that if the defect was one of format and not of substance, such defect should also be allowed to be cured. In the case on hand, we have already held that the defects pointed out in the

Election Petition, as well as, in the affidavit were not of mere format but of substance and, therefore, we are unable to apply the ratio in *G.M. Siddeshwar* (supra) to the case on hand.”

19. In the case of **G.M. Siddeshwar** cited supra, Supreme Court in para no. 24.1 held as under:-

“24.1 It was contended by the election petitioner that two affidavits would be necessary in an election petition only where the election petitioner wanted the election of the returned candidate to be set aside on the ground of commission of corrupt practices under Section 100(1)(b) of the Act as well as on other grounds as set out in Section 100(1) of the Act. In other words, the argument was that two affidavits were required to be filed by the election petitioner. It is important to note that it was not argued (as in the present case) that Order VI Rule 15(4) of the CPC does not require the filing of an affidavit as a part of the requirement of verifying the election petition. An alternative contention was put forward that a single affidavit, satisfying the requirement of the Act, could also be filed. The contention put forward was as follows (*P.a. Mohammed Riyas Case*, SCC p. 516, para 17):

“17..... The learned counsel submitted that two affidavits would be necessary only where an election petitioner wanted the election to be set aside both on grounds of commission of one or more corrupt practices under Section 100(1)(b) of the Act and other grounds as set out in Section 100(1). In such a case, two affidavits could possibly be required, one under Order 6 Rule 15(4) CPC and another in Form 25. However, even in such a case, a single affidavit that satisfies the requirements of both the provisions could be filed. In any event, when the election petition was based entirely on allegations of corrupt practices, filing of two affidavits over the selfsame matter would render one of them otiose, which proposition was found acceptable by the Karnataka High Court in *Prasanna Kumar v. G.M. Siddeshwar* [2010 (6) Kar LJ 78].”

Even though, Supreme Court has held that their need not be two affidavits at the same time, if there are allegations of corrupt practice, in such case two affidavits could positively be required, one under Order VI Rule 15(4) CPC and another in Form-25. Even if single affidavit satisfies the requirements of both the provisions, in that event, one need not go into the format, whereas in the present case, a single affidavit which has been filed by the election petitioner does not cover requirement (contents of Form 25). In other words, there is no substantial compliance, hence, election petitioner does not comply provisions of Section 123 read with Rule 94-A and Form-25.

20. Supreme Court in **R.K. Roja** cited supra held that for noncompliance of certain provisions of Act 1951 attract Order VII Rule 11 (d) of CPC.

21. Supreme Court in the case of **Tata Chemicals Limited** cited supra held that if the law requires that something be done in a particular manner, it must be done in that manner, and if not done in that manner has no existence in the eyes of law at all. Supreme Court in the case of **Captain Sube Singh and others vs. Lt. Governor of Delhi and others**, reported in (2004) 6 Supreme Court Cases 440, held that statute is required to be read as it is. Para no. 29 reads as under:-

“29. In *Anjum M.H. Ghaswala* a Constitution Bench of this Court reaffirmed the general rule that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself. (See also in this connection *Dhanajaya Reddy v. State of Karnataka*.) The statute in question requires the authority to act in accordance with the rules for variation of the conditions attached to the permit. In our view, it is not permissible to the State Government to purport to alter these conditions by issuing a notification under Section 67(1)(d) read with sub-clause (i) thereof.”

When a statute empowers a particular thing to be done delegated authority cannot deviate from the powers entrusted. In other words, within the four corners of the law one has to act. Having regard to the above principle. It was bounden duty of the election petitioner to comply Section 123 of Act, 1951, Rule 94-A of Rules 1961 read with Form 25. Due to noncompliance of the aforesaid provisions, election petitioner has not made out a case so as to reject CM No. 2-E of 2017, therefore, CM No. 2-E of 2017 stands allowed.

22. Consequently, election petition stands dismissed.

March 23, 2017

P. B. BAJANTHRI, Judge

Vkd

Whether speaking / reasoned : Yes

Whether reportable : Yes

[No. 82/CS-HR/1/16/2017-BE]

BY ORDER,  
VARINDER KUMAR, Principal Secy.

नई दिल्ली 29 अगस्त, 2017

**आ.अ. 53.**—लोक प्रतिनिधित्व अधिनियम 1951 (1951 की 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग ओडिशा राज्य से राज्य सभा के लिए एक सदस्य के रूप में श्री नेक्कान्ति भास्कर राव के निर्वाचन पर प्रश्न उठाते हुए श्री भुजबल माझी द्वारा दर्ज की गई 2016 की निर्वाचन याचिका सं. 1 पर कटक स्थित ओडिशा उच्च न्यायालय के दिनांक 26 अप्रैल, 2017 के आदेश को एतद्वारा प्रकाशित करता है।

(आदेश अधिसूचना के अंग्रेजी भाग में छपा है)

[सं. 82/रा.स.-ओ.डी./1/16/2017-बी.ई.]

आदेश से,

वरिन्दर कुमार, प्रधान सचिव

New Delhi the 29th August, 2017

**O. N. 53.**—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the order dated 26<sup>th</sup> April, 2017 of the High Court of Orissa at Cuttack dismissing the Election Petition No. 1 of 2016 filed by Shri Bhujabal Majhi calling in question the election of Shri Nekkanti Bhaskar Rao as the Members of the Council of States from the State of Odisha.

**In the High Court of Orissa, Cuttack**

**Misc. Case No. 8 of 2017**  
(Arising out of E.P. No. 1 of 2016)

Bhujabal Majhi

...Petitioner

Vs.

Nekkanti Bhaskar Rao

...Respondent

24      26.04.2017      This is an application at the instance of the election petitioner seeking a direction from this Court to send the summon copies filed by the respondent along with memo dated 7.2.2017 for an expert opinion under Section 45 of the Indian Evidence Act, 1972.

2.      Short background involved in the case is that the Election Petition No. 1 of 2016 filed under Sections 80 to 84, 100 & 117 of Representation of People Act, 1951 read with provision of the Orissa High Court rules Challenging the result of the election to the Council to State (Rajya Sabha) in favour of the sole respondent.

3.      Upon service of copy of the election petition. two Misc. Cases bearing Misc. Case No.46 of 2016 as well as Misc. Case No.45 of 2016 were filed by the respondent in the election petition, the first one is an application under Order VI Rule 16. Order VII Rule 11 of the Code of Civil Procedure, 1908 read with Sections 81, 83, 86 and 87 of the Representation of People Act, 1951 specifically praying for striking out paragraph 1, 2, 3, 4, 5, 7, 7(A), 7(B), 8 and 9 of the Election Petition and also for rejection of the election petition on the premises stated therein whereas the second one appears to be an application by the very same respondent praying therein for deferring filing of written statement until disposal of the Misc. Case No.46 of 2016. At the first instance, the application vide Misc. Case No.46 of 2016 as well as Misc. Case No. 45 of 2016 were heard. During course of hearing of these two Misc. Cases on the premises of coming to know certain surprises in filing of the Election Petition as well the copies for as service of summons on the respondent, the respondent filed Misc. Case No.4 of 2017, an application under Sections 81(2) and 86 of the Representation of People Act, 1951 read with Chapter-XXXIII Rules 3, 4, 5, 6 & 7 of the Rules of the Orissa High Court Volume-II praying therein for dismissal of the election petition No.1 of 2016 for being hit by the provision contained in Section 81(3) read with Section 86 (1) of the Representation of People Act, 1951. For the serious objection on maintainability of the election petition for being hit by the provisions contained in Sections 81 and 86 of the Representation of People Act, this Misc. Case was taken up for hearing ahead of Misc. Case No.45 of 2016 and Misc. Case No.46 of 2016. Hearing of the Misc. Case No.4 of 2017 was concluded upon hearing both the sides and taking into consideration the objections filed by the election petitioner therein, the order was reserved by order of this Court dated 6.3.2017. Before delivery of order in Misc. Case No.4 of 2017 and within three days after hearing of the

Misc. Case No.4 of 2017 was concluded, the election petitioner filed Misc. Case No.8 of 2017 considered herein seeking appropriate direction to send the summon copies filed by the respondent in the election case along with memo dated 7.2.2017 for an expert opinion under Section 45 of the Indian Evidence Act ahead or considering the allegation in Misc. Case No. 4 of 2017.

4. Looking to the necessity of taking a decision in Misc. Case No.8 of 2017 ahead of disposal of the Misc. Case No.4 of 2017, this Court took up the Misc. Cases No.8 of 2017 keeping the order in Misc. Case No.4 of 2017 in abeyance, considering the same to be dependent on the disposal of Misc. Case No.8 of 2017. Pressing Misc. Case No.8 of 2017, it is submitted by Sri R.K.Mohanty, learned Senior Counsel assisted by Sri Gopal Agarwal, learned counsel appearing for the Election petitioner that the so called summon copies filed along with memo in proof of the respondent's case that the election petition is hit by Sections 81 (3) and 86 of the Representation of People Act read with Chapter 23, Rules 3, 4, 5, 6 and 7 of the Rules of High Court of Orissa are not the actual copies of the election petition sent along with summons. In substantiating his argument, Sri R.K.Mohanty, learned Senior Counsel for the election petitioner submitted referring to the summon copies of the election petition served on the respondent pursuant to the orders of this Court clearly discloses that there are several discrepancies evident in naked eyes and the summon copies filed by the respondent in proof of service cannot be treated as actual copy of the election petition sent to the respondent by way of notice. It is contended that out of total 17 pages involving the summon copy, except first page, second page and last page, balance 14 pages are alleged election petition, verification and its complaint. Referring to those 14 pages, Sri Mohanty, learned Senior Counsel submitted that the respondent has made an attempt by adopting several fraudulent means to satisfy this Court that the copy filed along with memo dated 7.2.2017 are original summon copies of election petition being received by the respondent. It is alleged that copies filed are not the exact copy of the summon copy of election petition served through court in both ways. Sri Mohanty also alleged that, there is even discrepancy amongst copy served through speed post with A.D. and the one through court process, so far as speed post copy is concerned. Sri Mohanty, learned Senior Counsel alleged that only page 13 and 14 therein are the actual true copy of the election petition and rest 12 pages are manipulated by use of computer technology by the respondent himself in order to justify his stand that there is no proper service of the Election Petition and as such election petition remain unentertainable. It is also alleged that, there are discrepancies in the rubber seal used in pages 13 and 14 and in last page, rest 12 pages are with a different rubber seal having different ink. The election petitioner denied to have used rubber stamp in the address statement at page 1 to page 12. Similarly, there is also allegation with regard to signatures appearing in between lines of the said rubber seal and claimed to be not the original signature of the deponent. The allegation of manipulation in the election petition claimed to be further justified by making a submission that the so called summon copy filed by the respondent does not contain the signature of the verificant at page 12 of the summon copy. Referring to the provisions contained in Section 45 of the Indian Evidence Act, 1972, Sri Mohanty, learned Senior Counsel appearing for the election petitioner in a way to seek effective adjudication of the matter made a request to this Court to send summon copy along with the memo for an expert opinion before deciding the fate of Misc. Case No. 4 of 2017 in comparing the summon copy along with original election petition and also for comparing the signature as well as the seals specifically looking to the allegation made hereinabove.

5. Sri Bidyadhar Mishra, learned Senior Counsel appearing for the respondent on the other hand while stoutly denying each and every allegation of the election petitioner indicated hereinabove, submitted that first of all after the closure of hearing of Misc. Case No.4 of 2017, in absence of any such prayer made during pendency of Misc. Case No.4 of 2017 and as the order in Misc. Case No.4 of 2017 was already reserved, such an application is not entertainable. Coming to the allegations made against the respondent for his practicing fraud in bringing out a false case to defeat the election petitioner, Sri Mishra, learned Senior Counsel submitted that to establish the allegation of the respondent vide Misc. Case No.4 of 2017, the respondent has filed both the summon copies of the election petition served through speed post with A.D. as well as through court process along with the summons. On a contingency arose during course of hearing in Misc. Case No.4 of 2017, a query was made to the election petitioner as to whether he is intending to file any application for examination of the summon copies and the signatures therein etc. Sri Mishra, learned Senior Counsel submitted upon such query there was no response by the election petitioner at that point of time for which the election petitioner is debarred from filing an application of this nature after conclusion of hearing in Misc. Case No.4 of 2017. Sri Mishra, learned Senior Counsel making reference to the summon copies submitted that there has been certain afterthought interpolation to the election petition and the election petition since defective, to make the election petition maintainable the Election petitioner is bringing absurd allegations against the respondent. Sri Mishra further argued that, since there was no such observation by the Stamp Reporter of the Court while stamp reporting the election petition instead of sending the matter to expert for signature examination, it is here required to call for a report from the Stamp Reporter or to take his evidence as to whether on the date of stamp reporting i.e. on 30.7.2016 the alleged handwritten corrections and insertions now appearing at page 6 of the Court copies of the election petition were in fact available or not? and as to whether such handwritten corrections and insertions were appearing in the true copies of the election petition filed for service on the respondent or not? There is no objection to the above submission of Sri Mishra by the learned counsel appearing for the election petitioner. As a consequence and on the agreement of both the parties, this Court before concluding the hearing of the Misc. Case chose to call for a report of the Stamp Reporter answering on the following two questions:

"(i) Whether the copies served on the respondent by way of notice are the parallel copies filed by the election petitioner involving incorporations made at page 6 of the brief, signature of the parties as well as the signature of the verificant?

(ii) Whether incorporations made in sub paragraph or page 6 were available at the time of stamp reporting or not and in the event any such incorporations were there, then the reason for not reporting the same in the stamp reporting."

Looking to the allegation, at the outset, this Court finds the Stamp Reporter of the Court originally had the following stamp reporting:

- "1. In time Yes Expired on
2. Period of delay No
3. Court Fee of Rs.12/- paid
4. Authentication fee due on the
  - (a) Copy of Trial Court Judgment  
Rs ..... Decree Rs.....x.
  - (b) Appellate Court Judgment Rs...x....  
Decree Rs.....
5. (a) Copy of Trial Court Judgment/  
Order x
- (b) Appellate Court/Revisional order x Judgment
- (c) Second Copy of Petition x
- (d) Receipt showing copy of A.G x
- (e) Vakalatnama properly stamped  
Executed and accepted. Yes, filed
6. (a) Cause Title In order
- (b) Provision of Law Furnished
7. Code Indicated
8. Single Judge/S J
9. Other Defects.
9. (a) Security deposit of Rs. 2000/- has been deposited vide challan No. 21 dt. 18.7.2016.
9. (b) Requisite for issue of notice in both ways filed."

6. Looking to the observations of the Stamp Reporter at Clause 9 (b), this Court find the Stamp Reporter has only observed that the requisites for issue of notice in both ways are filed. Looking to the portions inserted at page 6 of the election petition, this Court observes there is no dispute that there have been certain handwritten insertions after the election petition is typed out. Looking to the initials of the Stamp Reporter while making the stamp reporting made in red ink, there appears, there is a great level of difference with the initials entered in page 2 of the election petition at cause title portion and the initials at both end of the signature of the election petitioner, which appears to be completely different than the initials made at the inserted handwritten portions. Further since there was hand written insertions on a computerized petition, it was necessary on the part of the Stamp Reporter to at least have some indication on the same considering the Provisions at Sections 81 and 86 of the Representation of People Act further, should have also given an endorsement of the Stamp Reporter as to whether the copies filed for whole purpose were true copies or not.

7. Section 81 of the Representation of People Act deals with presentation of Election Petition and Section 81(3) of the Representation of People Act reads as follows:

"81 (3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition."

Reading of the aforesaid provision makes it clear that the election petitioner not only required to file as many copies of the election petition as there are respondents but also required to attest every such copy under his own

signature to be a true copy of the petition. Perusal of the summon copy, this Court finds the summon copies not only did not contain the insertion portions but the insertion portions in the original are also not attested by the election petitioner as required under Section 81 of the Representation of People Act.

8. Be that as it may. considering the request sending the summon copies along with the memo for handwritten expert and as a matter of development, during course of argument of the said petition, with the agreement of both the parties for obtaining a report from the Stamp Reporter at the moment to arrive at a just conclusion, this Court as indicated herein above directed for submission of a report from the Stamp Reporter involving the issue. Consequently, Stamp Reporter dealing with Election Petition submitted a report with specific observations. On consent of both parties to take a decision in the matter based on the report so submitted, this Court proceeds in the matter taking into consideration the report submitted by the Stamp Reporter on the direction of this Court. Reading of the report of the Stamp Reporter, it appears though the particular Stamp Reporter is already superannuated in the mean while but the present Stamp Reporter taking the help of the Stamp Reporter then in-charge of the Election Petition submitted the report indicating therein that there is a presumption that there was no such manuscript appearing in page 6 at the time of filing of the Election Petition. On the basis of due verification and after comparing both the election petition as well as the summon copies, the present Stamp Reporter also indicated therein that the copies served on the respondent are not the parallel copy and the manuscript incorporation at page 6 of the election petition was admittedly not available in the copies accompanying notice. Similarly, the Stamp Reporter also reported that there are also discrepancies in the matter of signature at verification page. He also observed that there is difference in the use of ink in the seal even, leaving no doubt that there is inherent defects in the Election Petition and also difference in between the Election Petition and the copies served.

9. Apart from, taking into consideration the submission of the parties and the observations in the reports submitted by the Stamp Reporter, this Court has also the occasion to go through the election petition in original and the summon copies filed by the respondent in the matter of service of election petition on the respondent both way. Bare comparison of both the copies, this Court finds there is a great level of difference between both the copies. During Course of argument on Misc. Case No.8 of 2017, since the petitioner confined his request for calling for a report from the Stamp Reporter and deciding the Misc. Case No.4 of 2017 thereby depending on the report of the Stamp Reporter, this Court finds, the report of the Stamp Reporter is of great relevance to discard the allegations made in the present Misc. Case. This apart for the observations of this Court in comparison of both the Court copy and summon copies, particularly, finding great level of discrepancy for being not curable at this stage, it appears petitioner by filing previous application deliberately attempted to cause delay in disposal of Misc. Case No. 4 of 2017, this Court finds no merit in Misc. Case No.8 of 2017, which is dismissed accordingly. But, however, considering that the petitioner not only wasted this Court's time by filing a defective election petition but also Out the adversary to face an Unnecessary litigation, this Court while rejecting the Misc. Case No. 8 of 2017, imposes a cost of Rs. 5,000/- (Rupees five thousand) on the election petitioner to be paid to the respondent within two weeks.

Sd/-

BISWANATH RATH. J.

True Copy

Addl. Dy. Registrar (J&E)

**Misc. Case. No. 4 of 2017**  
**(Arising out of E.P. No. 1 of 2016)**

25      26.04.2017      This is an application at the instance of the respondent in the Election Petition No.1 of 2016 for dismissing the election case being hit by Section 81(3) read with Section 86 (1) of the Representation of the People Act, 1951.

2. Shortly stated the fact at the instance of the respondent is that upon receipt of the notice in the election dispute, the respondent filed two Misc. Cases i.e. Misc. Case No.45 of 2016 to defer filing the written statement till disposal of Misc. Case No.46 of 2016 being filed under Order 6, Rule 16 read with Order 7, Rule 11 of the Code of Civil Procedure along with Sections 81,82,86 and 87 of the Representation of Peoples Act, 1951 for striking out the pleadings and for the rejection of the election petition for want of cause of action.

3. During course of hearing of Misc. Case No. 46 of 2016 on detection of discrepancies in the Court copy and the summon copy served on the respondent, some handwritten insertions inserted in page-6 of the election petition changing the entire gamut involving election case, the respondent claimed that he was compelled to file Misc. Case No.4 of 2017 requesting the Court for dismissal of the election petition for being hit by Section 81(3) and Section 86(1) of the Representation of Peoples Act, 1951 particularly on the premises of non-service of true copy of the election petition filed in this Court on the respondent. Filing the summon copies both ways, through Court process and Registered post, learned counsel for the petitioner attempted to satisfy that there is clear violation of provisions at Section 81(3) of the Representation of People Act, 1951.

4. In response to service of copy of the petition in Misc. Case No. 4 of 2017, election petitioner filed objection seriously disputing the truthness in the copy of the election petition filed by the respondent in this Court to establish his allegation involving in Misc. Case. Filing the objection, the objector i.e. the election petitioner alleged that there is tampering in the election petition served on the respondent to make it suffering for non-compliance of the provision under Section 81(3) of the Representation of People Act, 1951 thereby inviting dismissal under Section 86(1) of the Representation of People Act. It is also alleged that the respondent even has gone to the extent of utilizing skill through computer to manufacture a different set of election petition to make a makeshift demonstration of the election petition to defeat the election petitioner.

5. For the dismissal of Misc. Case No.8 of 2017 by an independent order, this Court now proceeds to decide Misc. Case No.4 of 2017. Deciding Misc. Case No.4 of 2017 taking into consideration the observation of this Court in Misc. Case No.8 of 2017 that there is a great level of discrepancy in between the original and the summon copies particularly keeping in view that the insertion in handwritings made at page 6 of the Election Petition not being carried out in the summon copies both through Court and the postal way.

6. Considering the allegation contained in the Misc. Case No.4 of 2017 and looking to the nature of incorporations in the election petition for its absence in the summon copies, it makes a huge difference which remain incurable. Perusal of the original along with the summon copies presented by the respondent, it becomes manifest that the copies served is not the parallel and true copy of the Election Petition required under law to be served on the respondent, this is a case clearly establishing violation of provision contained in Section 81(3) of the Representation of People Act.

7. Since an allegation is made by the respondent that the copies served on the respondent are not true copies of the election petition, for the provision contained in the Representation of People Act, it becomes the duty of the Election Petitioner to establish the allegation as false. This Court finds in spite of sufficient opportunity, the election petitioner failed in establishing the allegation as false. Further, this Court considering the maintainability of election petition on the ground of discrepancy between the original petition and the copies served, first takes up the Provision of Law in this regard and proceeds as follows:

Section 81 and Section 86 of the Representation of the People Act, 1951 reads as follows:

**"Section 81. Presentation of petitions:-** (1) An election petition calling in question any election may be presented on one or more of the grounds specified in sub-section 1 of section 100 and section 101 to the High Court by any candidate at such election or any elector within forty-five days from, but not earlier than, the date of election of the returned candidate, or if there are more than one returned candidate at the election and dates of their election are different, the later of those two dates.

81 (3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition...

**86. Trial of election petitions.—(1)** The High Court shall dismiss an election petition which does not comply with the provisions of section 81 or section 82 or section 117.

(2) As soon as may be after an election petition has been presented to the High Court, it shall be referred to the Judge or one of the Judges who has or have been assigned by the Chief Justice for the trial of election petitions under sub-section (2) of section 80-A.

(3) Where more election petitions than one are presented to the High Court in respect of the same election, all of them shall be referred for trial to the same Judge who may, in his discretion, try them separately or in one or more groups.

(4) Any candidate not already a respondent shall, upon application made by him to the High Court within fourteen days from the date of commencement of the trial and subject to any order as to security for costs which may be made by the High Court, be entitled to be joined as a respondent.

(5) The High Court may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition.

(6) The trial of an election petition shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day until its conclusion, unless the High Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.

(7) Every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the High Court for trial."

8. From the reading of both the above Provisions this Court finds Section 81 of the Representation of People Act. Mandates filing of as many copies thereof as there are respondents not only attested under his own signature but should also be the true copy of the petition filed. Further, Section 86 of the Act makes provision for dismissal of election petition, if it violates the provisions at Sections 81, 82 or 117 of the Act. In disposal of the Misc. Case No.8 of 2017, this Court has already observed that there exist violation of Section 81(3) for non filing of true copy of the Election Petition for the purpose of summon to the respondent.

(9) The history of the judgment of the Hon'ble Apex Court in such situation is as follows:

In the case of *Jagat Kishore Prasad Narain Singh v. Rajendra Kumar Poddar and other*, 1970 (2) *Supreme Court cases* 411 in paragraph-7, the Hon'ble Apex Court observed as follows:

"The law requires that a true copy of the election petition should be served on the respondents. That requirement has not been either fully or substantially complied with. Therefore we have no doubt in our mind that the election petition is liable to be dismissed under Section 86 of the Act."

In the case of *Murarka Radhey Shyam Ram Kumar v. I Roop Singh Rathore and others*, AIR 1964 *Supreme Court* 1545, defining the word 'copy' involving a proceeding under the representation of People Act, the Hon'ble Apex Court in paragraph-11 held as follows:

"11 We agree with the High Court and the Election Tribunal that the first defect is not a defect at all. When every page of the copy served on the appellant was attested to be a true copy under the signature of the petitioner, a fresh signature below the word "petitioner" was not necessary. Sub-section. (3) of S. 81 requires that the copy shall be attested by the petitioner under his own signature and this was done. As to the second defect the question really turns on the true scope and effect of the word "copy" occurring in sub-sec. (3) of S. 81. On behalf of the appellant the argument is that sub-s. (3) of S. 81 being mandatory in nature all the requirements of the sub-section must be strictly complied with and the word "copy" must be taken to be an absolutely exact transcript of the original. On behalf of the respondents the contention is that the word "copy" means that which comes so near to the original as to give to every person seeing it the idea created by the original. Alternatively, the argument is that the last part of sub-s. (3) dealing with a copy is merely directive, and for this reliance is placed on the decision of this court in *Kamaraja Nadar v. Kunju Thevar*, 1959 SCR 583: (AIR 1958 SC 687) We are of the view that the word "copy" in sub-s. (3) of S. 81 does not mean an absolutely exact copy but means that the copy shall be so true that nobody can by any possibility misunderstand it (see *Stroud's judicial Dictionary*, third edition, volume 4, page 3098). In this view of the matter it is unnecessary to go into the further question whether any part of sub-s. (3) of S. 81 is merely directory. Several English decisions were cited at the Bar The earlier decision cited to us is the decision in *Pocock v. Mason*, (1834) 131 ER 1111 where it was held that the omission of the words "the" and "by" in the copy of the writ of *capias* prescribed by the schedule 2 W. 4, c. 39 did not invalidate an arrest. The reason given was thus expressed:

"To ascertain whether or not an unfaithful copy produces any alteration in the meaning, supposes an exertion of intellect which it may be inconvenient to require at the hands of those who serve the copy. It was to obviate this inconvenience, that the legislature has given a form, and required that it should be pursued. Nothing but ordinary care is necessary for taking the copy.

In a later decision *Sutton v. Mary and Burgess*, (1835) 149 ER 1291 the copy of the writ served on the defendant omitted the letter "s" in the word "she" It was held that the omission was immaterial as it could not mislead anybody. In *Morris v. Smith*, (1835) 150 ER 51, there was a motion to set aside the service of the writ of summons for irregularity, on the ground that the defendant being an attorney, he was only described as of Paper Buildings in the Inner Temple, London and the addition of "gentleman" was not given. It was held that the form in the statute 2 Will 4, C. 39 S. 1 did not require the addition of the defendant to be inserted in the Writ and it was sufficient to state his residence. The writ of summons was therefore valid. In another case in the same volume *Cooke v. Vaughan*, (1938) 150 ER 1346 it was held that where a writ of *capias* described the defendant by the addition of "gentleman", but that addition was omitted in the copy served, the copy was not a copy of the writ. in compliance with the stat. 2 Will. 4, c. 39, S. 4. On behalf of the respondents a number of decision under the Bills of Sale Act, 1878 and the Amendment Act, 1882 (45 and 46 Vict. c. 43) were cited. The question in those cases was whether the bill was "in accordance with the form in the schedule to this Act annexed" as required by S. 9 of the Bills of Sale Act 1878, and Amendment Act 1882. In *In re Hewer Ex parte Kahen*, (1882) 21 Ch D 871 it was held that a "true copy" of a bill of sale within the Bills of Sale Act, 1878, S. 10. sub-s. (2), must not necessarily be an exact copy, so long as any errors or omissions in the copy filed are merely clerical and of such a nature that no one would be thereby misled. The same view was expressed in several other decisions and it is unnecessary to refer to them all. Having regard to the provisions of Part VI of the Act, we are of the view that the word "copy" does not mean an absolutely exact copy. It means a copy so true that nobody can by any possibility misunderstand it. The test whether the copy is a true one is whether any variation from the original is calculated to mislead an ordinary person. Applying that test we have come to the conclusion that the defects complained of with regard to Election Petition No.269 of 1962 were not such as to mislead the appellant, therefore there was no failure to comply with the last part of sub-s. (3) of S. 81. In that view of the matter sub-s. (3) of S. 90 was not attracted and there was no question of dismissing the election petition under that sub-section by reason of any failure to comply with the provisions of S. 81.



This disposes of the second preliminary objection raised before us."

In the case of **Rajendra Singh v. Smt. Usha Rani and others**, (1984) 3 Supreme Court Cases 339, the Hon'ble Apex Court in paragraph-8 held as follows:

"8. This being the position, it is manifest that the appellant did not receive the correct copies as contemplated by Section 81 (3) of the Act. The respondent has also not been able to prove that the copies served on the appellant were out of the 10 corrected copies which she had signed and filed. It appears that in view of a large number of the copies of the petition having been filed, there was an utter confusion as to which one was correct and which was not. It is obvious that if an election-petitioner files a number of copies, some of which may be correct and some may be incorrect, it is his duty to see that the copy served on the respondent is a correct one. A perusal of Sections 81 (3) and 86 of the Act gives the impression that they do not contemplate filing of incorrect copies at all and if an election-petitioner disregards the mandate contained in Section 81 (3) by filing incorrect copies, he takes the risk of the petition being dismissed in limine under Section 86. It is no part of the duty of the respondent to wade through the entire record in order to find out which is the correct copy. If out of the copies filed, the respondent's copy is found to be an incorrect one, it amounts to non-compliance of the provisions of Section 81 (3) which is sufficient to entail a dismissal of the election petition at the behest.

10. From perusal of both the election petition as well as summon copy served on the respondent, this Court observes for not inserting the handwritten manuscript in the summon copy served on the respondent both ways, there is no service of true copy of the election petition on the respondent and under the circumstance, this Court observes the omissions in the summon copy is incurable ultimately making the election petition defective. For the settled principle of law, as laid down by the Hon'ble Apex Court referred to hereinabove and the observations made hereinabove, the election petition is not maintainable for being contrary to the provisions of Section 81 (3) and hence liable to be dismissed following the provisions contained in Section 86 of the Representation of People Act.

11. Further, for the mandatory provision contained in Section 81 (3) of the Representation of People Act requiring signature of the election petitioner even on the summon copies served on the respondent, since the Election Petition was originally a typed one and the handwriting insertion is made subsequent to preparation of Election Petition in absence of the signature of election petitioner in the summon copies, particularly, at the incorporation of handwritten materials at page 6 of the original Election Petition, the Election Petition is otherwise also not maintainable being clearly hit by Section 81 (3) of the Representation of People Act.

12. For the variations in between the original election petition and the summon copy, it appears the defect has the effect to misleading the return candidate. Law is also well settled that the right of an elected representative should not be lightly disturbed in the level of differences/omission. Hon'ble Apex Court has even gone to the extent of holding that right of an elected representative cannot be infringed on the basis of defective election petition clearly attempting to mislead the return candidate.

13. This Court has taken into account the decision cited by Sri Goapl Agrawal, learned counsel appearing for the election petitioner and finds the decision since stand on different footing and for the findings therein that the defects did not mislead the elected candidate, the decisions cited on behalf of the petitioner has no relevancy in the present case.

14. **As a result, this Court while allowing the Misc. Case No. 4 of 2017 declares the Election Petition No. 1 of 2016 as not maintainable and thus while dismissing the election Petition, for election petitioner wasting the time of Court and also dragging the respondent to face a wholly not maintainable Election Petition, this Court imposes a cost of Rs. 15000/- (rupees fifteen thousand) on the election petitioner to be paid to the respondent as compensation towards harassment faced by him in participating the proceeding all through.**

Sd/-

BISWANATH RATH. J.

True Copy

[No. 82/CS-OD/1/16/2017-BE]

By Order,

VARINDER KUMAR, Principal Secy.